

FINANCIAL INSTITUTIONS LAW
(Pyidaungsu Hluttaw Law No. 20 /2016)
1st Waning of Pyatho 1377 ME
25 January 2016

Pyidaungsu Hluttaw hereby enacts this Law.

Chapter 1
Title and Definition

Title

1. This Law shall be called the Financial Institutions Law.
2. The following expression contained in this Law shall have the meanings given hereunder:-
 - (a) **State** means the Republic of the Union of Myanmar;
 - (b) **Financial Institution** means banks, non bank financial institutions and scheduled institutions;
 - (c) **Bank** means a business entity licensed by Central Bank under this Law to carry on banking business. Such context includes commercial bank, development bank and a licensed branch of a foreign bank;
 - (d) **Banking business** means commercial banking business as well as development banking business;
 - (e) **Business entity** means companies formed under Myanmar Companies Act or Special Companies Act and state owned financial institutions.
 - (f) **Commercial banking business** means the following businesses-
 - (1) receiving various kinds of deposits business;
 - (2) business of paying and collecting cash for cheques drawn by or paid in by persons communicating with the bank;
 - (3) providing credit facilities ; and
 - (4) such other banking businesses as prescribed and approved by the Central Bank under section 52.
 - (g) **Commercial Bank** means a bank licensed by the Central Bank to carry on Commercial banking business according to this law.
 - (h) **Development banking business** means a business , which only accept the deposits with terms exceeding one year and financing of specific economic sectors at terms consistent with the terms of the resources collected by such banks or funds provided by the Government;
 - (i) **Development Bank** means a bank licensed by the Central Bank to carry on Development banking business according to this law;
 - (j) **Non-Bank Financial Institution** means financial institutions that are registered under Section 20 to carry on one or more of the following businesses-
 - (1) finance company;
 - (2) leasing;
 - (3) factoring;
 - (4) credit token;
 - (5) money services;
 - (6) any other credit service prescribed by the Central Bank;

- (k) **Holding company** means a company that owns 51% or more of the shares of a bank and has the right to elect the majority of directors of the bank or having significant influence over the management, operations or policies of the bank;
- (l) **Board of Directors** means the Board of Directors of a financial institution;
- (m) **Bank Branch** means the principal office conducting businesses of the bank, branch office conducting businesses for the bank, a pay office, sub-pay office, an agency office and a place of business set up and maintained for a limited period only;
- (n) **Business day** means any calendar day other than a Saturday, Sunday, public holiday or bank holiday;
- (o) **Capital funds** means-
 - (1) in the case of a bank established in Myanmar, its capital used for the purposes of calculating its capital adequacy ratio prescribed by the Central Bank; and the aggregate of its paid-up capital and its published reserves, deduction having been made for any loss appearing in the accounts of the bank;
 - (2) in the case of a licensed branch of foreign bank in Myanmar, initial capital investment amount as prescribed by the Central Bank and capital fund to be contributed to reach the adequate capital ratio prescribed from time to time by the Central Bank;
- (p) **Central Bank** means the Central Bank of Myanmar established under the Central Bank of Myanmar Law;
- (q) **Chief Executive** means a person who is principally responsible for the management and conduct of the business of the financial institutions. Such context includes a person who is directly appointed at the financial institution, or a person who is acting temporarily for the financial institution or a person performing by arrangement of the financial institution.
- (r) **Company** has the same meaning as defined under the Myanmar Companies Act;
- (s) **Subsidiary company** has the same meaning as defined under the Myanmar Companies Act;
- (t) **Credit facility means -**
 - (1) the granting by a financial institution of loans, advances and other facilities whereby a customer of the financial institution has access to funds or financial guarantees; or
 - (2) the incurring by a financial institution of other liabilities on behalf of a customer;
- (u) **Credit societies business** means the business of engaging primarily in financing to individuals who are members for consumption, production or commerce, using funds collected in member's accounts;
- (v) **Credit token business** means the activity of issuing a token being a credit card, debit card, charge card or stored value card and such other card or issuing credit token by other means prescribed by the Central Bank;
- (w) **Credit bureau** means an entity specialized in the collection and sale of credit performance information for individuals and companies;
- (x) **Deposit** means when a person or an entity making the payment and sum of money paid on terms under which it will be repaid or it is repayable, either wholly or in part, on demand or at a time or in circumstances agreed by the person making the payment and the person receiving it;
- (y) **Documents** means:
 - (1) any matter or information expressed or described on any material in any form; and
 - (2) any visual or sound recording, electronic, magnetic or mechanical
- (z) **Employee** means an employee of the financial institution and includes an individual temporarily transferred from another employer.
- (aa) **Factoring business** means the business of financing accounts receivables;

- (bb) **Fit and proper** means probity, integrity, diligence, competence, and business experience of a person and set of criteria prescribed by the Central bank for the purposes of this Law.
- (cc) **Finance Company business** means engaging primarily in financing the purchase of goods or services with funding other than deposits from the public;
- (dd) **Foreign bank branch** means a branch of a foreign bank licensed by the Central Bank to carry out banking business in Myanmar;
- (ee) **Government** means the Union Government of the Republic of the Union of Myanmar;
- (ff) **Leasing business means** the business of letting or sub-letting movable property on hire, regardless whether the letting is with or without an option to purchase the property.
- (gg) **License** means a permit issued by the Central Bank to carry out the banking business under this Law;
- (hh) **Certificate/ Registered Certificate** means a permit issued by the Central Bank to the Non- Bank Financial Institutions to carry on business;
- (ii) **Ministry** means the Union Ministry of Finance;
- (jj) **Money services business** means the business of -
 - (1) money transmission;
 - (2) issuance and management of payment instrument;
 - (3) cashing of cheques; and
 - (4) issuing and selling of traveler’s checks or money orders;
- (kk) **Officer in relation to a financial institution** means:
 - (1) the chief executive officer or Deputy chief executive officer;
 - (2) the chief financial officer; and
 - (3) such other employee performing executive functions at the financial institution;
- (ll) **Payment system** means any system or arrangement for the transfer, clearing or settlement of funds or securities, but excludes—
 - (1) an in-house payment system operated by a person solely for own administrative purposes.; and
 - (2) such other systems or arrangements as may be prescribed by the Central Bank.
- (mm) **Payment instrument** means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment;
- (nn) **Place of business** means a branch or office of a financial institution;
- (oo) **Relative** means in relation to a person which includes his spouse, brother or sister, brother or sister of his spouse, any lineal ascendant and descendant of him or his spouse and his dependents; and any such relationship created through adoption;
- (pp) **Related party in relation to a financial institution** means-
 - (1) a person who has substantial interest in the financial institution or the financial institution has significant interest in the person;
 - (2) a director or officer of the financial institution or of a body corporate that controls the financial institution;
 - (3) a relative of a natural person covered in paragraphs (1) and (2);
 - (4) an entity that is controlled by a person described in paragraphs (1), (2) and (3); or
 - (5) a person or class of persons who has been designated by the Central bank as a related party because of its past or present interest in or relationship with the financial institution;
- (qq) **Scheduled Institutions** means institutions established by the separate law, not applicable under this law, that provide financial services for a specific group and a community that include;
 - (1) Rural Development Bank;
 - (2) Agricultural Bank;

- (3) micro finance institutions licensed under the Microfinance Law;
 - (4) credit societies; and
 - (5) Postal Savings Bank
- (rr) **Securities** include securities as defined in the prevailing Securities Exchange Law;
- (ss) **Substantial interest** means owning, directly or indirectly, ten percent or more of the capital or of the voting rights of a financial institution or, directly or indirectly, exercising control over the management of the financial institution, as the Central Bank may determine;
- (tt) **Related company** means other company which owning and exercising control not less than twenty percent and not more than fifty percent of shares of a company.

Chapter 2

Objectives

3. The objectives of this Law are as follows:
- (a) for the sustainable economic development of the State;
 - (b) for the development of the financial sector of the State;
 - (c) to carry on the financial services business by the Bank and Financial Institutions within the State in accordance with the international standard;
 - (d) to monitor and scrutinize the Financial Institutions effectively by the Central Bank to be in line with the International standards;
 - (e) to maintain the stability, safety and soundness of the financial system and to protect the risk of loss to depositors.

Chapter 3

Establishment

4. The Financial Institutions shall be established as limited liability company in accordance with the Myanmar Companies Act as well as with the Special Company Act. For the state owned Financial Institution, it shall be deemed as being established under this Law.

Chapter 4

General Duties and Powers of the Central Bank relating to Financial Institutions

5. General duties and powers of the Central Bank are as follows:
- (a) grant licenses;
 - (b) provide registration, approval and authorization;
 - (c) carry out regulatory and supervisory measures of Bank and Non Bank Financial Institutions in accordance with the provisions of this Law;
 - (d) require Bank and Non Bank Financial Institutions to comply with any order, regulation, directive and guidelines issued under this Law;
 - (e) require Bank and Non Bank Financial Institutions to submit information and periodical reports as may be prescribed by the Central Bank;
 - (f) promote, implement and enforce consumer protection in the banking and payment system; and
 - (g) other powers conferred under this Law.
6. When discharging its functions, the Central Bank:
- (a) may authorise one of its employees to perform any functions as prescribed;
 - (b) may appoint any person who is not its employee to perform any functions, exercise any powers, or discharge any duties, of the Central Bank under this Law as determined by Board of Directors of Central Bank.
7. When performing its duties, the Central Bank:

- (a) may cooperate with regulators of financial institutions not governed under this law and relevant domestic and international authorities and exchange information relating to the Banks or Non Bank Financial Institutions;
- (b) may enter into memorandum of understanding and other suitable agreements with other financial regulators to ensure the safety and soundness of the financial system;
- (c) in regulating and supervising Foreign banks branch and the Foreign Banks or in which foreign banks that foreign investor has a substantial interest and Non Financial Bank Institutions, the Central Bank shall cooperate with the foreign regulators concerned, on the basis of reciprocity and ensuring timely exchanges of information adequate to discharge its regulatory and supervisory responsibilities.
- (d) to enter into cooperative arrangements and shall provide for the confidential treatment of the information received pursuant to the memorandum of understanding and other arrangements.

Chapter 5

License

- 8. (a) Any person desirous to conduct banking business under this Law must apply to the Central Bank for a license in the prescribed form accompanied by the following documents:
 - (1) documents evidencing that the company or entity is incorporated in accordance with the law in the State;
 - (2) a copy of the proposed applicant's Memorandum of Association, its Articles of Association and any other document associated with its formation;
 - (3) the proposed location of the principal place of business and the branch offices of the proposed bank;
 - (4) copies of the audited balance sheets and profit and loss accounts of the applicant;
 - (5) the amounts of the authorized capital and the amounts that have been paid in on capital subscriptions;
 - (6) a business plan for the proposed institution, setting out the types of activities envisaged for and the structural organization of the proposed institution;
 - (7) the qualification and experience, business or profession, the financial condition of owners of substantial interest in the proposed institution,
 - (8) the qualification and experience, the directors and chief executive of the proposed institution;
 - (9) an authorization of the applicant permitting the Central Bank to carry out financial, criminal and professional background checks on the applicant, its directors and chief executive and affiliated persons;
 - (10) an authorization of the owners, directors and chief executive of the proposed bank, permitting the Central Bank to carry out financial, criminal and professional background checks on them and affiliated persons; and
 - (11) such additional information as shall be prescribed by regulation of the Central Bank.
 - (b) The State Owned Banks established by any law prior to the enforcement of this Law shall apply for license in accordance with the section 176 of this Law.
9. A Foreign Bank must apply to the Central Bank for a license in the prescribed form to carry on banking business in State through a subsidiary or branch. The following documents shall accompany with the application in addition to the documents listed in section 8:
- (a) a credit rating report by an international credit rating agency;
 - (b) a statement of its capital position, its ranking by total assets and capital in its home country and globally;

- (c) a written undertaking of the foreign bank, to provide such funds as may be necessary to meet all its obligations relating to the business activities of its subsidiary or branch in State; and
 - (d) a written statement from the bank regulator of the country where the foreign bank maintains its principal place of business certifying that:
 - (1) the foreign bank has a valid license to carry on banking business in that country;
 - (2) the foreign bank is authorized under the law of that country to establish a subsidiary or a branch in Myanmar; and
 - (3) no facts are known to the regulator showing that any director or officer of the said foreign bank are not fit and proper.
10. (a) The Central Bank may, on an application having been duly made in accordance with Section 8 and 9, approve the application for license if the licensing requirements under this Law are met.
- (b) The Central Bank shall reject an application for a license if it is satisfied that any of the following circumstances apply –
- (1) the licensing requirements under this Law has not been met;
 - (2) any information contained in the application for a license or any information submitted in connection therewith is found to be false, misleading or inaccurate;
 - (3) the Central Bank has determined that there are indications that the applicant would not comply with any of the requirements under this Law or any other law in Myanmar;
 - (4) the Central Bank has determined that there are indication that the influence that would be exercised on the applicant by any person who has a substantial interest in the proposed institution would threaten the sound and prudent management of the applicant;
 - (5) the Central Bank has determined that the applicant would be connected to a group of persons that would pose a threat to the sound and prudent management of the applicant or hinder the Central Bank in the discharge of its regulatory and supervisory responsibilities; or
 - (6) the Central Bank has determined that current domestic economic or financial conditions of the State warrant the rejection of the application for a license.
11. The Central Bank:
- (a) shall notify the applicant in writing of its decision whether to issue or refuse a license within a period of not later than six months from date of the receipt of a complete application, after scrutinizing in accordance with stipulation.
 - (b) shall return the incomplete application to add requirements. Regarding with the application which cannot complete the requirements within in stipulated period, the Central Bank shall notify the applicant in writing to refuse to issue a license.
 - (c) shall impose such conditions and restrictions as it deems necessary, if the Central Bank has decided to accept the application. The Central Bank may make changes to the conditions and restrictions, in the light of any factors that may undermine the efficient and stable operation of the bank or the financial system or the interests of depositors of the bank.
 - (d) shall publish a list of licensed bank for public information annually.
12. A person who carries out the banking business shall comply with the following particulars:
- (a) a company legally incorporated in Myanmar and has a valid license issued by the Central Bank;
 - (b) a foreign bank subsidiary or branch with a valid license issued by the Central Bank;
 - (c) such person is exempted under Section 19.

13. The licensed Banks:
 - (a) shall comply with the conditions and restrictions specified in the license issued by the Central Bank;
 - (b) shall commence its operations within one year from the date of receipt of its license to operate;
 - (c) shall not carry on any activity other than the activities permitted by this Law and subject to any restrictions as may be imposed under this Law.
 - (d) shall conspicuously display a copy of its license at its place of business or each of its places of business in Myanmar.

14.
 - (a) The Central Bank may prescribe different fees for licenses issued for the different businesses or for different classes or categories of bank.
 - (b) Every licensed Banks shall pay the following fees not less than one month before the anniversary date of the issue of the license;
 - (1) a license fee upon being licensed;
 - (2) a fee for opening any office in the State other than the office at the principal place of business; and
 - (3) an annual fee on the license so issued and in respect of each office, including the office at the principal place of business.

15. The Central Bank may revoke the license of a Bank if:
 - (a) failing, within the period specified, to deposit the modified minimum capital requirements prescribed for the Banks;
 - (b) failing, within the period specified, to restore the minimum capital required following losses in business;
 - (c) violates the existing laws and fail to comply with the terms and conditions prescribed by the Central Bank within the period specified;
 - (d) liquidating voluntarily or involuntarily or bankruptcy;
 - (e) extinguishing of the original legal entity as a result of a merger, amalgamation or division;
 - (f) Central Bank is satisfied that the revocation of the license would not be contrary to the national interest and interests of the depositors of the Bank;
 - (g) the Bank provided, in connection with its application for the license, information that was false or misleading in a material particular;
 - (h) the Bank fails to commence permitted activities within one year from the date of receipt of the license;
 - (i) the Bank fails to carry out the permitted activities continuously three months during operating business without reasonable grounds;
 - (j) the Bank conducts permitted activities in a manner detrimental to the rights and interests of depositors;
 - (k) it would be contrary to the national interest for the license to remain in force;
 - (l) it would be contrary to financial system stability in Myanmar for the license to remain in force;
 - (m) the Bank violates of the Central Bank of Myanmar Law, this Law and the rules and regulations issued there under;
 - (n) the Bank fails to comply with the orders or directives issued by the Central Bank;
 - (o) the Bank becomes insolvent or is unlikely to return to solvency within a reasonable period of time;
 - (p) the Bank licensed is merged or amalgamated with any other Bank without approval of the Central Bank;
 - (q) the Bank applies to the Central Bank for the revocation of its license because it does not desirous to continue its Banking business.

16. The Central Bank:
- (a) shall make a decision regarding with the revoking of license within ninety days from the date which any matter mentioned in the section 15 occurred.
 - (c) shall be furnished in writing to the concerned Bank information concerning the decision made under sub-section (a) and the grounds on which the decision is based
17. Where the decision has been made to revoke a license under section 15 and 16, the Central Bank shall publish a declaration for public information.
18. The Bank shall obtain a prior written approval of the Central Bank to alter its Memorandum of Association or Articles of Association.
- 19.
- (a) This law shall not apply to Scheduled Institutions.
 - (b) Notwithstanding anything contained in subsection (a), Scheduled Institutions shall be subject to the whole or any part of this Law, if the Ministry upon the recommendation of the Central Bank decides that-
 - (1) it is required to protect the interest of the depositors or public;
 - (2) the total assets of the Scheduled Institutions exceeds the amount prescribed by the Central Bank in a regulation for purposes of this section;
 - (3) the said institution detracts the stability and soundness of the banking system or the financial system as a whole; and
 - (4) the said institution is operating with intention to refrain from obtaining a license or registering as a Bank or a Non Banking Financial Institution under this Law.
 - (c) The Ministry shall issue an order published to give effect to the decision in subsection (b) for public information.
 - (d) It shall not be necessary for the Ministry or Central Bank to give an opportunity to the scheduled institution concerned to make any representation prior to the order.
 - (e) An order issued by the Ministry under subsection (b) shall be deemed to be an integral part of this Law and be read as included in this law.
 - (f) The Ministry may issue necessary regulations and the Central Bank may issue necessary notification, order, directive and rules to give effect to this section.
 - (g) The provisions of this section and any regulations or order made hereunder shall have full force and effect notwithstanding anything contained in the prevailing law which the Scheduled Institution is established and anything contained in any other prevailing law.

Chapter 6

Non Banking Financial Institution and Foreign Bank Representative Office

- 20.
- (a) When a company is incorporated according to the law and a person desirous to carry out Non Banking Financial Institution, it is required to apply to the Central Bank to obtain the registration certificate in accordance with the stipulations.
 - (b) Persons carrying on Non Banking Financial Institution business prior to the enforcement of this Law shall apply to the Central Bank within 6 months of the effective date of this Law to obtain a registration certificate of the Central Bank to carry on Non Banking Financial Institution business.
21. The Central Bank shall issue the registration certificate to the applicant completed under section 20 after scrutinizing in accordance with the stipulations.
22. The Central Bank may stipulate the required conditions regarding with the following matters:
- (a) governance requirements;
 - (b) transparency and disclosure requirements;
 - (c) consumer protection;

- (d) reporting requirements;
 - (e) such other matters to oversight of the Non Banking Financial Institutions.
23. Non Banking Financial Institutions may engage in one or all of the following activities subject to any conditions and restriction imposed by the Central Bank-
- (a) Finance Company businesses;
 - (b) Leasing businesses;
 - (c) Factoring businesses;
 - (d) credit card businesses;
 - (e) Money services businesses;
 - (f) any other credit services the Central Bank may prescribe; and
 - (g) such other activities allowed by the Central Bank time to time.
24. A foreign financial institution desirous to open its representative office in the State in accordance with this Law, shall apply to the Central Bank to obtain the registration certificate in accordance with the prescriptions.
25. The Central Bank:
- (a) Upon receiving the application under section 20, after scrutinizing in accordance with the prescriptions shall make a decision to issue the registration certificate or refuse.
 - (b) If allowed to open the representative office of the foreign financial institution, shall issue the registration certificate to the applicant after stipulating conditions and restrictions as it deems necessary.
26. (a) A representative office receiving the registration certificate shall only carry on business activities specified by the Central Bank or permitted business
- (b) No foreign financial institution shall, through its representative office, carry on any banking business or Non Banking Financial business within the State.
27. Each Non Banking Financial Institution and foreign financial institution, when the Central Bank issued the registration certificate:-
- (a) shall pay prescribed fees to the Central Bank.
 - (b) shall at any time submit the periodical report prescribed by the Central Bank relating to its business or information relating to its affairs.
28. (a) Non Banking Financial Institution or representative office shall notify to the Central Bank of any amendment or alteration to any of its Memorandum of Association and Article of Association within three months.
- (b) Such notification under the sub section (a) shall be approved and declared verification by a Director from the Non Banking Financial Institution or a representative office.
29. (a) The Central Bank may, if satisfied that it is necessary, may generally announce in the gazette that some or all the provisions of this Law shall apply to a Non- Banking Financial Institution or one of the representative office, or a Non Banking Financial Institution, business or a class of representative office or any one of the classes, , for the following matters:
- (1) promote monetary stability and a sound financial structure;
 - (2) influence the credit situation to the advantage of the State;
 - (3) protect the interest of the public in respect of the business or activities carried on by the Non Banking Financial Institution, or representative office.
- (b) Where an order under subsection (a) is published the provisions of this Law made applicable to such Non Banking Financial Institution, or representative office, or such class, category of Non Banking Financial Institution business or representative offices, shall apply as if the references therein to a Bank were references to such particular Non Banking Financial Institution, or representative office, or to such class,

- category or description of Non Banking Financial Institution business, or representative offices.
30. The Central Bank shall publish and declare annually a list of all Non Banking Financial Institutions and representative office mentioned in Section 29.

Chapter 7

Restrictions relating to Acceptance and Solicitation of Deposits

31. Only a person who received the licence from the Central Bank can accept deposits.
32. (a) Financial Institution or a person shall make below deposit calls from any person in domestic or abroad only with the prior written consent of the Central Bank:
- (1) soliciting or accepting of deposit;
 - (2) entering into or offering to enter into any agreement with a view to acceptance of deposit.
33. (a) If the Central Bank is of the opinion that any statement made in an advertisement issued by a Bank is false, deceptive, offensive or misleading, the Central Bank may by notice in writing direct the Bank the following :
- (1) cease the continued issue of the advertisement;
 - (2) modify the advertisement in such manner as may be specified by the Central Bank;
 - (3) Withdraw all the advertisements or displays and take action as much as practical to amend and re advertise or draw back
- (b) The Central Bank may alter, amend or revoke any direction issued under subsection (a).

Chapter 8

Capital, Reserves and Significant Ownership

34. (a) The Bank shall maintain their capital as follows:
- (1) in the case of a bank incorporated in Myanmar, its paid-up capital is not less than twenty thousand million kyat (twenty billion) kyat;
 - (2) in the case of branch or subsidiary of foreign bank, its paid up capital is not less than the equivalent of seventy five million US dollars.
- (b) The paid-up capital in subsection (a) may be increased from time to time by the Central Bank as prescribed in a regulation.
- (c) The Bank shall maintain at all times, net capital funds unimpaired by losses, in such ratio specified by the Central Bank in a regulation.
- (d) For the purposes of this Law, the initial capital funds of a Bank shall be the amount of subscribed and paid up capital.
- (e) The Bank shall obtain the prior written approval of the Central Bank to reduce its share capital.
- (f) The Central Bank may require a Bank with a subsidiary to calculate and maintain the minimum capital adequacy ratio on a consolidated basis.
- (g) For the purposes of this Law-
- (1) **Core capital or Tier 1 Capital** means the reserve fund disclosed to the public after deducting the permanent shareholders' equity in the form of issued and fully paid up ordinary shares, and perpetual non-cumulative preference shares, capital grants and disclosed reserves less year to date losses, goodwill organization, pre-operating expenses, prepaid expenses, deferred charges, leasehold rights and any other intangible assets.
 - (2) **Supplementary capital or Tier 2 capital** means general provisions which are held against future, presently unidentified losses and are freely available to meet losses which subsequently materialize, subordinated debts,

cumulative and redeemable preference shares, and any other form of capital as may be determined and specified from time to time by the Central Bank;

- (3) **Total capital** means the sum of core capital and supplementary capital.
- (4) **Total risk weighted assets and off-balance sheet exposures** means total assets and off-balance sheet exposures adjusted in relation to the risks of the different categories of assets and off-balance sheet exposures as may be prescribed by the Central Bank.

- 35. (a) The Bank shall maintain a reserve fund. Twenty five per centum of the net profit shall be transferred to its reserve fund. Such transfer shall be made a sum as long as equal to the one hundred per centum of its paid up capital.
- (b) Notwithstanding anything contained in subsection (a), the Central Bank may from time to time specify a different portion of the net profits of each year, to be transferred to the reserve fund of a Bank.
- 36. The Bank shall hold such minimum, or minimum average, amount of liquidated assets at all times or over such time as may be specified by the Central Bank in a regulation.
- 37. The Bank shall maintain at all times such minimum amount of assets as may be specified by the Central Bank in a regulation.
- 38. (a) A foreign bank shall maintain for its bank branch a minimum amount of assigned capital, which amount shall be the same as the minimum amount of initial capital funds to be maintained if such foreign bank branch was established and licensed as a domestic bank.
- (b) The assigned capital to be maintained by a foreign bank for its branch shall be kept in the form and manner as may be specified by Central Bank in a regulation.
- 39. The Bank shall-
 - (a) make provision for loans, advances and other assets before any profit or loss is declared, to recover the loss;
 - (b) ensure that the provision for loans, advances and other assets made under paragraph (a) is adequate according to such regulations as may be specified by the Central Bank.

Dividend

- 40. (a) The Bank shall only pay dividends or make any form of distribution to its shareholders from its profits.
- (b) No Bank shall pay any dividend or make any form of distribution to its shareholders–
 - (1) until all its capitalized expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been completely written off;
 - (2) if, as a result thereof, the aggregate book value of its assets would be less than the sum of the book values of its liabilities and capital funds;
 - (3) the Bank is in breach of a requirement imposed by or under a provision of this Law.

Prescription assets and liabilities

- 41. The Central bank may prescribe –
 - (a) different minimum amounts of assets to be held by different classes or categories of Bank;
 - (2) assets and liabilities to be classified for different classes or categories of Bank;

- (3) different provisions for different classes or categories of Bank in relation to any matter provided under this Law.

Acquisition of Substantial Interests

42. (a) A person desirous to acquire substantial interest in a Bank shall apply to the Central Bank attached with the any other supporting documents as prescribed by the Central Bank.
- (b) The Central Bank shall be authorized to carry out the background checks referred to the attached documents in sub-section (a) and the applicant and may require any additional documents or information in relation to such application
- (c) The Central Bank shall not grant an approval to an application made under sub-section (a) and (b), if it determines that one or more of the following circumstances apply:
- (1) the applicant, being an individual, is not a fit and proper person;
 - (2) the applicant, being an entity legally incorporated, has one or more directors or chief executive who are not fit and proper persons;
 - (3) facts are known to the Central Bank to indicate that the person making the acquisition would exercise significant influence on the that would threaten the sound and prudent management of the Bank.
- (d) The Central Bank shall have power to approve or reject any application made under sub-section (a).

43. Any person who is a substantial shareholder of a Bank shall apply to the Central Bank for approval to continue to be such a shareholder, within 6 months after effective date of this Law.

Such status of the substantial shareholder shall be continued only upon the receipt of the approval of Central Bank.

44. Each Bank shall, submit an annual report to the Central Bank which includes the names and addresses of shareholders, having substantial interest in the Bank and the number of shares holding voting rights held by such persons.

45. An individual person, or more than one person collectively when entering into an agreement to acquire the substantial interest from a bank or desiring to arrange the same, it requires prior written approval from the Central Bank of Myanmar.

46. (a) The provisions of Section 43 and 45 shall not apply to:
- (1) Voting shares of a Bank acquired for following matters-
 - (aa) shares received in lieu of debt receivable;
 - (bb) under an underwriting arrangement, in which case the bank licensed institution shall dispose of such voting shares within one year or such longer period as the Central Bank in exceptional circumstances may approve;
 - (2) Acquires voting shares held as an agent, trustee or custodian.
- (b) A Bank which has acquired voting shares of a bank under paragraph 1(aa) of sub-section (a) shall inform the Central Bank upon its acquisition of such voting shares.

47. (a) Where the Central Bank finds out that any person has contravened the provisions of section 42,43,44 and 45 or the regulations made under section 50, the Central Bank may take the following administrative actions:
- (1) in respect of any voting shares of a defaulting person, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such shares;
 - (2) prohibit the exercise of any voting rights in respect of such shares;

- (3) prohibit the issue of further shares or pursue any offer made to their holder;
 - (4) except in a liquidation, prohibit the payment of any sums due from the Bank on such shares; or
 - (5) in respect of the defaulting person, direct such person to sell or dispose of the voting shares by public auction.
- (b) A directive made under sub-section (a) shall be served on the defaulting person as soon as practicable, and may be publicized in such manner as the Central Bank deems fit.
 - (c) Any defaulting person against whom a directive has been made under sub-section (a) may, within fourteen days of the service of the directive, make representations in writing to the Central Bank applying for a revocation or for a modification of the order.
 - (d) The Central Bank may, after considering the representations made under sub-section (c), either confirm the directive, or revoke it, or vary it in such manner as it deems fit.
 - (e) The Central Bank may give directions to the directors or officers of a Bank as may be necessary to give effect to any directive made under sub-section (a).

Merger of Banks

- 48. (a) With the prior written approval of the Central Bank, the Bank shall carry on the followings:
 - (1) for a Bank to acquire the business or a substantial part of the business of another Bank or to sell all or a substantial part of its own business;
 - (2) for the amalgamation or merger of a Bank with another Bank;
 - (3) for a foreign bank to acquire the business or a substantial part of the business of a Bank in State or to sell all or a substantial part of its own business in State;
 - (4) which will result in a change in the control of a Bank or its holding company.
 - (b) An application for the approval in subsection (a) shall be submitted to Central Bank together with a copy of the proposed agreement and all other relevant information and documents.
 - (c) After receiving an application the Central Bank, may require the applicants or any of them to provide any additional information or documents.
 - (d) The Central Bank shall, on an application having been duly made under this section approve or refuse the application and make necessary modifications, or impose conditions as deemed fit in approving the application.
 - (e) Pursuant to the sub-section (a) (4), the term control includes:
 - (1) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other entity legally incorporated;
 - (2) holding, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of twenty percent or more than 20 percent of the voting power of a company or entity.
- 49. (a) Where Central Bank has granted approval to an application in respect of an agreement under section 48, institution whose business is to be transferred and the other person to whom the transfer is to be made, may make a joint application to the respective High Court of the State or Region to issue such order to facilitate or enable the agreement being given effect to.
 - (b) On the hearing of an application under sub-section (a), the concerned High Court of the State or Region may grant an order with the terms applied for or with such modifications or variations as the High Court deems just or proper in the circumstances of the case.

- (c) The order of concerned High Court of the State or Region made under sub-section (b) shall be published by the transferee for public information.
- (d) The transferor shall lodge, within thirty days of the making of the order of the concerned High Court of the State or Region under sub-section (b), an authenticated copy of such order together with an authenticated copy of the agreement or arrangement approved by Central Bank with-
 - (1) the Registrar of Companies; and
 - (2) the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property, or any interest in movable property transferred pursuant to the order.
- (e) The concerned High Court of the State or Region shall, where an order of sub-section (a) vests any transferable land, or any share or interest in any transferable land in the transferee cause a copy of the order to be served on the Land Administrator, immediately after the making of the order so that the Land Administrator, gives effect to the provisions of the said section.
- (f) An order of the High Court of the State or Region under sub-section (b) may relate to any property or business of the transferor outside Myanmar and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between State and the country, in which such property or business is, or where there are no such arrangements, in accordance with the law applicable in such country.

Limitation of the maximum ownership of shares.

- 50. The Central Bank may stipulate as follows:
 - (a) the maximum percentage of voting rights shares of a Bank which a person can hold;
 - (b) the maximum percentage of shares depending upon the class which can be held according to clause (a) above by a company, business entity or an individual.

**Chapter 9
Permitted Banking Activities**

- 51. The Bank may carry on the activities permitted by this Law, subject to the provisions of its Memorandum of Association and Articles of Association and to the conditions and restrictions of its license.
- 52. The Commercial Bank may carry out any or all of the following activities, subject to any conditions and restriction in the license:
 - (a) acceptance of deposits;
 - (b) lending;
 - (c) leasing;
 - (d) factoring;
 - (e) money services;
 - (f) credit token business;
 - (g) foreign exchange business;
 - (h) issuing and administering payment instruments such as credit cards, travellers' cheques and bankers' drafts (bill of exchange) ; (i) issuing of guarantees and commitments;
 - (j) trading for own account or for account of customers in, money market instruments such as cheques, bills and certificates of deposit; currency forward and spot contracts, foreign exchange; swaps and exchange and interest-rate instruments; instruments and transferable securities;
 - (k) providing corporate advise;
 - (l) money broking;
 - (m) portfolio management and advice;

- (n) trustee services;
 - (o) credit reference services;
 - (p) e- banking;
 - (q) mobile banking;
 - (r) safe custody services;
 - (s) development financing business;
 - (t) mortgage financing; and
 - (u) other activities determined by the Central Bank.
53. Through as separately incorporated subsidiary, a Bank may engage in –
- (a) insurance business;
 - (b) securities brokering business;
 - (c) any other activity related to banking business as approved by the Central Bank.
54. A Development Finance Bank may engage in one or all of the following activities subject to any conditions and restriction in the license:
- (a) providing long term finance
 - (b) issuing guarantees and commitments;
 - (c) such other activities prescribed by the Central Bank
55. Any subsidiaries of the Bank shall be subject to supervision under this Law to the same extent as the Bank and the Central Bank may require any information otherwise required with respect to such Bank and its subsidiary to be reported separately for each entity and on a consolidated basis.
56. No Bank shall engage, whether on its own account or on a commission basis, whether alone or with others, in wholesale or retail trade including import and export trade, except:
- (a) in connection with the sale of security given to or held by it;
 - (b) purchasing or selling of gold by Bank.
57. A Bank shall not purchase or in any other way acquire any immovable property or any right therein, exceeding such percentage of its capital funds as may be determined by the Central Bank, other than the following matters:
- (a) required for the purpose of conducting its banking business or of providing housing or other amenities for its staff;
 - (b) accepting any immovable property as security for a loan.

Requirements relating to credit facilities

58. (a) The Bank shall ensure the following matters:
- (1) adequate internal policies, practices and procedures relating to the granting of credit facilities, making of investments and the ongoing management of the loan and investment portfolio;
 - (2) adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loans loss provisions and loan loss reserves.
- (b) A director, chief executive or officer of a Bank shall not give any credit facility in contravention of any credit limit imposed on him, and any agreement made with him, by the Bank.
- (c) The Bank shall submit to the Central Bank the following particulars:
- (1) any information relating to its policies and procedures for the giving of any credit facility;
 - (2) a report on the limit or the terms and conditions imposed on every director, chief executive or officer of the Bank in relation to granting of credit facilities.

- (d) The Central Bank may modify the policies or procedure relating to credit facility submitted by the Bank.

Large exposures

59. (a) The Bank shall not lend money to any person, a business group or group of connected counterparties up to more than twenty per centum of the core capital of the Bank. Such limitation does not apply to the government policy related loan of the State owned bank.
- (b) The limitation in subsection (a) does not apply to transactions between the Banks unless otherwise specified by the Central Bank.
- (c) The Central Bank may establish additional limits for unsecured, partially secured and secured financial exposures of a Bank.
- (d) A Bank shall report to the Central Bank, the particulars of each large financial exposure, as specified by the Central Bank.
- (e) The Central Bank may specify the group of connected counterparties, aggregate exposure, additional limits and other requirements as it deems necessary.
- (f) For the purpose of this section, exposure means a credit facility given by a bank to or a representative of any person which credit facility may include loans, advances, overdrafts, lease financing, acceptances, guarantees, letters of credit, performance bonds, foreign exchange contracts and any other form of direct or indirect financial obligation to a bank as defined by the Bank, including any off-balance sheet credit facility.

Restrictions on Investment

60. (a) A Bank shall not acquire or hold shares in any following company or enterprise-
- (1) a company or enterprise, that is not a public company and that does not meet the criteria determined by the Central Bank;
 - (2) that carries on the type of business that is declared ineligible by the Central Bank.
- (b) When a Bank acquires or hold shares in another company or enterprise it can only buy the amount not exceeding 10 percent of its Bank's capital funds.
61. (a) A Bank may acquire or hold shares in another company or enterprise as follows:-
- (1) up to a value of five per centum of the capital funds of the other Bank ; and
 - (2) up to a value of five per centum of the unimpaired capital funds of a entity which carries on the Non Banking Financial Institution business or a company.
- (b) The limit in section 60, sub-section (b) shall not apply-
- (1) where the Bank acquires or holds any shares of any company or enterprise under an underwriting or sub-underwriting contract for a period not exceeding seven business days, or such further period as the Central Bank may approve;
 - (2) to any acquisition or holding of shares approved by the Central Bank in another Bank under Chapter 14 and 15 of this Law or a company that is a subsidiary of the Bank;
 - (3) to any acquisition or holding of shares in the course of the satisfaction of any debt due to the Bank provided such acquisition or holding is declared in writing to the Central Bank and is disposed of within two years from the date of acquisition.
- (c) Any Bank acquiring or holding shares under this section shall keep a register of such holdings available for inspection at all times.
- (d) For the purposes of this section, the Central Bank may by regulations specify -
- (1) an acquisition or holding in an enterprise may be made by such Bank;

- (2) the nature and maximum value of shares any person and aggregate value of all shares that may be acquired or held by a bank licensed institution.
 - (g) Where a Bank has contravened the provisions of this section or any regulations made there under, the Central Bank may -
 - (1) prohibit such bank licensed institution from increasing the amount of shares in that company or enterprise ;
 - (2) require such Bank to decrease the amount of its shares in that company or enterprise to specified limit within a specified time.
62. The provisions of section 60 and 61 shall not apply to Foreign Banks and their foreign bank branches.
63. (a) No Bank shall grant credit for the acquisition of its own shares or for the purchase of debt securities with respect to which the Bank has an unconditional or contingent liability.
- (b) No Bank shall grant credit against the security of its own shares or shares of a company that has substantial interest in the Bank.
- (c) The provisions of sub-section (a) and (b) shall not apply for granting credit facility secured by its own shares to an employee stock ownership plan to finance the purchase of shares of the Bank. Provided that the sum of the amounts of funds so provided shall not exceed the equivalent of five *per centum* of the paid up capital of the Bank.

Lending to related party

64. (a) No Bank shall provide any credit facility to its directors, managers or shareholders holding more than five per centum of the voting shares of the Bank.
- (b) No Bank shall enter, directly or indirectly, with a related party into any transaction on terms and conditions that are less favorable to the Bank than market terms and conditions.
- (c) The Bank may enter into a transaction with a related party if there are the following conditions:
 - (1) such transaction has been approved at a meeting of the Board of Directors of the Bank by the votes of not less than two thirds of the number of its directors other than any director concerned;
 - (2) such transaction is secured by collateral.
- (d) No Bank shall grant any credit facility to a related party if as a result thereof a limit specified by regulation of the Central Bank would be exceeded.
- (e) Central Bank may specify the following -
 - (1) the principal amount of any credit facility;
 - (2) the aggregate principal amount outstanding on all credit facility or any class of credit facility given by a Bank to any related business group or to a member of such group; and
- (f) All credit to related party shall be disclosed in the accounts for that financial year and for each subsequent financial year till such credit facility has been repaid or settled in full.
- (g) Any transaction of a Bank with a related party person that is in breach of terms and conditions mentioned under this section shall be promptly reported to the Central Bank describing the transaction and specifying its.
- (i) If a Bank fails to administer in breach of this section, the Central Bank may issue a directive within thirty days, to secure repayment of all amounts due or impose such other conditions as it deems fit.
- (j) This section shall not apply to a director or officer who is an employee of the Bank at the time that the credit facility is granted, if the credit facility is granted under a scheme applicable to the employees of such Bank.

65. The Central Bank may issue regulations to set the maximum foreign currency exposure which Bank may incur in foreign currency generally or in any specified currency or currencies.
66. (a) The Central Bank shall issue regulations in accordance with the provisions of this Law to specify the prudential requirements for Bank.
- (b) Prudential requirements may be specified for all Banks or may be specified for one or more classes or categories of Bank based on the differences in the purpose, nature and size of business or the origin of financial resources, of such Bank.
- (c) Any Bank that fail to comply with a requirement prescribed under this section shall pay to the Central Bank, within such time as may be determined by the Central Bank, a fine at such rate specified in a regulation of the Central Bank.

Records of Transactions and Commitments

67. (a) The Bank shall keep on file the pertinent documents for every transaction and commitments, in such form as shall render the documents admissible as evidence in a court.
- (b) The Central Bank may in a regulation specify the terms and conditions on record keeping and record retention including-
- (1) the types of documents;
 - (2) the form and methods of retention;
 - (3) the duration of retention;
 - (4) such other requirements deemed necessary to give effect to this section.

Money Laundering and the Reporting of suspicious transactions

68. The Central Bank shall stipulate specific procedures for the Financial Institutions to comply relating to matters reporting to the respective authorities in accordance with the laws enacted by the Pyitaundsu Hulttaw and matters of Anti Money Laundering Law and Anti Terrorism Law..

Control of establishment or acquisition of subsidiaries. [Establishment of subsidiaries or Control of Acquisition.]?

69. A Bank shall obtain the prior approval from the Central Bank for the following matters:
- (a) establish or acquire any subsidiary locally or abroad;
 - (b) open an office locally or abroad.

Establishment of correspondent banking business.

70. (a) The Bank may establish a correspondent banking business with any financial institution from abroad.
- (b) The Central Bank may prescribe by regulation the terms and conditions for the establishment of correspondent banking business with financial institution from abroad.

Financial Consumer Protection

71. (a) It shall be the responsibility and duty of the Central Bank to promote financial consumer protection and financial capability of the Banks. [Central Bank has the responsibility to protect the financial consumers and to promote the financial capability of the banks.]?

- (b) For the purposes of implementing the responsibility under subsection (a), the Central Bank shall conduct the following -
 - (1) to draw a project plan of a strategic procedure for protection of financial consumer and implement in the State;
 - (2) to co-ordinate with other financial sector regulators and compromise on protection measures for consumers;
 - (3) to receive all necessary information from other financial sector regulators and financial institutions;
 - (4) to issue directives to the financial sector in areas that are not supervised by the other financial sector regulators and where there are gaps ;
 - (5) promote an out of court dispute resolution system to deal with disputes between financial institution and its customers (dealers?);
 - (6) to promote and consolidate financial consumer research and data collection; [To strengthen the capacity of the financial consumers in research and data collection works]?
 - (7) to establish an effective financial literacy network of stakeholders; and
 - (8) to keep the Government and public informed of the activities and issues in the area of financial consumer protection.
- (c) The Central Bank may issue regulations necessary to give effect to sub-section (a) and (b).

Anti-Competitive practices [Anti unfaircompetition practices.

- 72. A Bank shall not conduct following-
 - (a) entering into contracts or agreements or adopting practices of any kind which would secure them a position of dominance on the financial markets;
 - (b) engaging in manipulative practices in order to obtain an unfair advantage for themselves or for third parties.

**Chapter 10
Board of Directors, Chief Executive of Banks**

- 73.
 - (a) Every Bank shall have a Board of Directors consisting of not less than five who shall be elected by the general shareholders meeting of the Bank.
 - (b) A meeting of the Board of Directors of a Bank shall not be duly constituted although the number of directors required to constitute the quorum at such meeting is present, unless at least one independent non-executive director is present at such meeting.
 - (c) The provisions of this section shall not apply to foreign bank branches.
- 74.
 - (a) All functions to be performed and all powers to be exercised by the Bank, other than those assigned to be performed by the general shareholders meeting, shall be performed and exercised by the Board of Directors subject to this Law.
 - (b) The Board of Directors may frame necessary bye-laws in order to systematically perform the functions to be performed by it under sub-section (a).
 - (c) The responsibilities of the Board of Directors shall include the overseeing of the management of the affairs of the Bank and includes the following -
 - (1) adopting and reviewing a comprehensive risk management process;
 - (2) establishing and reviewing the system and procedures of control and risk management;
 - (3) adopting policies for organizational arrangements for delegating authority and responsibility;
 - (4) adopting adequate internal, practices and procedures that promote ethical and professional standards;
 - (5) adopting and reviewing the system of internal controls of the Bank ; and

- (6) ensuring that the Bank complies the requirements of the rules, regulations, directives, and guidelines issued under the law
75. (a) The Board of Directors may form one or more committees or sub-committees according to need for specific purposes including the following-
- (1) risk management committee;
 - (2) credit committee;
 - (3) remuneration committee;
 - (4) audit committee; and
 - (5) liability and assets committee.
- (b) The functions, duties, powers and working procedure of a committee or sub-committee formed under sub-section (1), and the remuneration or allowances to be paid to its members shall be as determined by the Board of Directors.
76. (a) No person shall be eligible to be appointed, elected or nominated as a director, chief executive or manager of a Bank unless that person is a fit and proper person to hold office and he is not prevented from doing so by any provision of this Law.
- (b) In determining whether a person is a fit and proper person under this Law, in addition to such other matters that may be prescribed by the Central Bank, the following matters shall be taken into consideration -
- (1) the academic or professional qualifications or effective experience in banking, finance, business or administration or any other relevant discipline of the person concerned;
 - (2) whether such person is or has been subject to any investigation or inquiry in relation to fraud, deceit, dishonesty or any other improper conduct by any regulatory body, professional association, or any other body established by law within or abroad;
 - (3) whether such person has been convicted by any court in Myanmar or abroad in respect of a crime committed in connection with financial management.
 - (4) whether such person is an un-discharged bankrupt or has been declared a bankrupt in Myanmar or abroad;
 - (5) whether such person has failed to satisfy any judgment or order of any court whether in Myanmar or abroad including the repayment of a debt;
 - (6) whether such person has been declared by a court in Myanmar or abroad or an official medical board in Myanmar to be of unsound mind;
 - (7) whether such person has been removed or suspended by a regulatory action or Central Bank from serving as a director or officer in any Bank or financial institution or corporate body in Myanmar or abroad;
 - (8) whether such person has been a substantial shareholder, director, chief executive of any Bank or financial institution in Myanmar or elsewhere whose license has been suspended or has been cancelled.;
- (c) Without prejudice to sub-section (b), a director, chief executive officer or manager of a Bank shall not simultaneously hold office as a director or officer of another Bank or financial institution except where such other institution is a subsidiary or an holding company of the bank licensed institution.
- (d) No person shall be nominated, appointed or elected as a director of a Bank before the Bank has given the Central Bank written notice of intent thereof within 30 days of the appointment.
- (e) The written notice shall be in such form as may be prescribed by the Central Bank and be accompanied by the relevant documents and information as required by the Central Bank.
- (f) The Central Bank is authorized under this Law to carry out any such background checks as it considers appropriate in confirming any of the matters referred to in sub-sections (b), (c) and (d).

Appointment and Conditions of Service of Chief Executive

77. (a) The Board shall appoint a Chief Executive of the Bank subject to this Law and the Memorandum and Articles of Association.
- (b) No person shall be nominated or appointed as Chief Executive of a Bank unless the Bank has complied with Section 76 (d).
- (c) The Central Bank may, either approve or disapprove the proposed appointment or nomination as Chief Executive and shall, within thirty days after receipt of the notice of intent, notify the Bank of the decision.
- (d) Any person aggrieved by a notice of disapproval by the Central Bank under sub-section (c) may within fifteen days of the date of receipt of the notice, appeal to the Central Bank.
- (e) On receipt of a notice of appeal under sub-section (d), the Central Bank may within thirty days of receipt either confirm the nomination or appointment or reject the appeal.
- (f) The decision of the Central Bank shall be final.

Disqualification and Removal from Office of Directors and Officers

78. (a) A person shall be ineligible to hold office as a director or Chief Executive if-
- (1) the person is not a fit and proper person to continue in office; or
 - (2) the person whose appointment, election or nomination had not been properly notified to the Central Bank under section 76 (d); or
 - (3) the person whose appointment or nomination has been disapproved by the Central Bank under section 77 (c); or
 - (4) the person who does not have the full capacity or permanently incapable of performing duties with the Bank ; or
 - (5) the person has otherwise acted in a way that is manifestly opposed to the objectives and interests of the Bank or its depositors.
- (b) A Bank shall, within fifteen days of becoming aware that one of its directors or Chief Executive is ineligible to hold the office, cause the removal of the ineligible director or Chief Executive and notify the Central Bank in writing accordingly.
- (c) Where the Central Bank is satisfied that any of the directors or Chief Executive of a Bank who is ineligible under sub-section (a), continues to hold office, the Central Bank may -
- (1) direct in writing to remove such person from the office within such period as may be specified in such direction; and
 - (2) notify in writing the person whose removal is required of such a direction with a copy of the direction.
- (d) The Bank shall within the period specified in the direction, remove the person identified from the office and notify such person in writing of his removal from office and shall take any such other steps as are necessary to inform the shareholders of the Bank and the Registrar of Companies of such removal.
- (e) The removal of the director or officer in accordance with the directions given under sub-section (c) shall take effect from the date of receipt of the notification of removal, notwithstanding the provisions of any other law or the Articles of Association of the bank licensed institution.
- (f) A Bank which fails to comply with any direction given under sub-section (c) (1) within the period specified and any director or officer who has been served with a notice under sub-section (c) (2) who continues to act as a director or officer, shall each be guilty of an offence under this Law.
- (g) Any Bank that is aggrieved by the removal of a person from the office of director or officer of that Bank under this sub-section (c), or the person concerned, may appeal to the Central Bank in which case, the procedures provided for under sections 77(d) and (e) shall apply.

Disclosure of Interests

79. (a) Every director and officer shall disclose in full to the Board of Directors of the Bank any substantial financial or commercial interest that the person or any relatives may have either directly or indirectly.
- (b) Such disclosure pertained under sub-section (a), shall be made upon first becoming a director, Chief Executive or manager of the Bank and annually thereafter.
- (c) Whenever any matter related to such an interest, arises for discussion in a meeting of the Board of Directors, the director or officer shall disclose the interest and shall not attend any deliberations or vote on the decision on such a matter.

Liability of Directors and Officers

80. (a) In addition to any liability imposed by other provisions of this Law or any other law, any director, Chief Executive or officer of a Bank shall be liable for any loss or damage sustained by the Bank, any depositor of the Bank or any other person as a result of his gross negligence or willful misconduct in the performance of his or her functions or duties as director, chief executive or officer of that bank licensed institution.
- (b) For the purpose of this section, any person authorizing or willfully permitting gross negligence or willful misconduct by another person shall be jointly with such other person and severally liable for any loss or damage sustained as a result thereof.
- (c) Actions to recover damages from a director or officer under this section shall be commenced within three years after occurrence of the negligence or misconduct.

Duty to Maintain Secrecy

81. (a) A Bank shall keep secret the information relating to the affairs or the account, record, transaction of a customer of a bank licensed institution.
- (b) No director, officer or employee of any Bank shall provide or otherwise disclose to any person, such customer information.
- (c) No person who has any information or document which to the person's knowledge was disclosed in contravention of subsection (a) shall disclose the same to any other person.

Exception to Duty of Maintaining Secrecy

82. (a) The provisions of section 81 shall not apply to the disclosure of customer information-
- (1) to the Central Bank, or to any director, officer or employee of the Central Bank, or to any person appointed under this Law, where the disclosure is for the purpose of the exercise of powers and duties of the Central Bank;
 - (2) to any person rendering professional services to the Central Bank where the person is authorized in writing by the Central Bank to obtain the information from the Bank;
 - (3) which the customer, or his representative, has given permission in writing to disclose;
 - (4) in a case where the customer is declared bankrupt, or, if the customer is a company, the company is being or has been wound up, in State or abroad;
 - (5) where the information is required by a party to a commercial transaction, to assess the credit worthiness of the customer relating to such transaction;
 - (6) where the information is required for the purposes of any criminal proceedings or in respect of any civil proceedings between a Bank and its customer or his guarantor relating the customer's transaction; or between the

- Bank and two or more parties making adverse claims to money in a customer's account;
- (7) in accordance with the law by the order of a court;
 - (8) where the disclosure is solely in connection with the conduct of internal audit of the Bank or the performance of risk management;
 - (9) to disclose to credit bureaus licensed by the Central Bank;
 - (10) where disclosure is solely in connection with the performance of operational functions of the Bank, where such operational functions have been out-sourced;
 - (11) where disclosure is in relation to the merger or proposed merger of the Bank with another bank licensed institution;
 - (12) where the disclosure is solely in connection with the transfer or proposed transfer of the business of the Bank to another Bank;
 - (13) where the disclosure is solely in connection with the restructure, transfer or sale of a Bank under Chapters 14 and 15 ; and
 - (14) where such disclosure is authorized under Anti Money Laundering Law and Anti Terrorism Law.
- (b) In any civil proceedings under subsection (a) (6) or (7) where any information or document is likely to be disclosed in relation to a customer's account, such proceedings may, if the court, of its own motion, or on the application of a party to the proceedings, so orders, be held in camera and in such case, the information or document shall be secret as between the court and the parties thereto, and no such party shall disclose such information or document to any other person.
 - (c) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such civil proceedings as are referred to in subsection (b), or any information likely to lead to the identification of the parties thereto.

Further exception to Duty Maintaining of Secrecy

- 83. Notwithstanding the provisions of any other section, the Central Bank may -
 - (a) publish information obtained by it from the Bank , in a consolidated form as it considers fit in the public interest, and
 - (b) Exchange supervisory information on a confidential basis, with other official agencies, both domestic and abroad, responsible for the safety and soundness of the financial system, if the information is used only for purposes related to the effective supervision of the institutions concerned.

Chapter 11 Accounts, Audit and Financial Statements

Accounts and Financial Statements

- 84. (a) The Bank shall maintain accounts and records, and prepare periodic financial statements, adequate to reflect its operations and financial condition, in accordance with such internationally accepted accounting standards, as prescribed by regulations made by the Central Bank.
- (b) Compliance with such regulations shall be deemed to be in compliance with the accounting norms specified in or under any other law.
- (c) Without limiting the generality of the provisions of sub-section (a), each foreign bank branch shall maintain separate books, accounts and records, and shall prepare financial statements, including profit and loss accounts, reflecting only the assets, liabilities, income and expenses of the foreign bank branch, that are segregated from the other books, accounts, records and financial statements of the licensed foreign bank to which it belongs.

Audit Committee

85. (a) Every Bank is required to set up an Audit Committee.
- (b) The Audit Committee shall consist of three members appointed by the general shareholders meeting of the Bank. The term of the members of the Audit Committee is four years.
- (c) A member of the Board of Directors shall be the head of the Audit Committee. The members of the management shall not concurrently serve in the Audit Committee.
- (d) The Audit Committee shall –
- (1) establish appropriate accounting procedures and accounting controls for the Bank, supervise compliance with such procedures, and moreover, audit the Bank's accounts and records;
 - (2) more than monitoring compliance with the laws and regulations applicable to the Bank must report to the Board of Directors thereon; and
 - (3) deliver opinion on any matter submitted to the Board of Directors if requested.
- (e) The Audit Committee shall meet regularly once in every three months and shall attend the meeting whenever invited by the Board of Directors.

Balance Sheet and Profit and Loss Account

86. (a) The Bank shall prepare at the expiration of each financial year -
- (1) a balance sheet as at the last working day of the respective financial year;
 - (2) a profit and loss account in respect of such financial year;
 - (3) such other financial statements as required by the Central Bank.
- (b) The balance sheets and profit and loss accounts of a Bank shall reflect its operations and financial condition and those of its subsidiaries, both on an individual and on a consolidated basis.
- (c) The Bank shall transmit the financial statements to the Central Bank within three months after the close of the financial year.
- (d) The Bank shall publish its audited financial statement for such financial year in such other manner permitted by the Central Bank.
- (e) The audited financial statement shall be exhibited in a conspicuous place of each Bank's branch.
- (f) The Bank shall prepare the balance sheet and profit and loss account in accordance with the forms as prescribed by the Central Bank. In addition, issuing of approval and publishing for public shall be compliance with the Central Bank's prescription.
- (g) Where the Central Bank determines that a disclosure statement published by the Bank under sub-section (f) does not contain information which it is required to contain or is otherwise false or misleading, the Central Bank may, by notice in writing to the Bank, require the Bank -
- (1) to publish a disclosure statement that contains the information that was omitted; or
 - (2) to publish a disclosure statement that does not contain false or misleading information; or
 - (3) to take such other corrective action as the Central Bank may specify in the notice letter.

Periodic Returns to Central Bank

87. (a) Each Bank shall prepare and submit to the Central Bank periodic financial returns.
- (b) Each return required under subsection (a) shall be –
- (1) submitted in such form and at such period as shall be prescribed by the Central Bank;

- (2) certified as to its accuracy by the Chief Executive and the chief financial officer of the Bank; and
- (c) Returns to be so submitted by a licensed foreign bank branch shall cover the assets, liabilities, income, expenses, administration and operations of its foreign bank branch.
- (d) Failure to submit any return as required by this section shall be an offence under this Law.

External Auditors

- 88.
- (a) Every Bank has responsibility to appoint suitable external auditor for auditing its accounts, by holding the general meeting.
 - (b) The Bank shall replace their external auditors at least once every five years and may not appoint the same auditor for more than three consecutive times or such other period as may be prescribed by the Central Bank.
 - (c) Each Bank promptly after appointing external auditors, inform the Central Bank of the names, business address, qualifications and experience of the auditors.
 - (d) External auditors shall be regarded as suitable, unless the Central Bank has given a written notice that for reasons explained in the notice, the external auditors employed by the Bank are not suitable, in which case the Bank shall promptly replace its external auditors.
 - (e) Only fit and proper person shall be appointed as auditors and no related party and employee of a Bank shall be eligible for appointment as external auditor for that Bank.
 - (f) Any person appointed as external auditor who shall after such appointment become a related person or employee of the Bank shall immediately cease to act as its external auditor.
 - (g) If a Bank fails to appoint external auditors under sub-section (a), the Central Bank shall have the power to appoint external auditors for such Bank to carry out the tasks specified by section 89 at the expense of the Bank.
 - (h) Every external auditor appointed by a Bank under sub-section (a) or (e) shall have a right of access at all times to the books, accounts and vouchers and all documents and records belonging to the Bank, which he considers necessary for the performance of his duties, and he shall be entitled to require from the directors and officers of the Bank such information and explanations as he thinks necessary for the performance and proper discharge of his duties and functions as auditor.
 - (i) The Central Bank may issue regulation on the criteria for external auditors and related matters.
- 89.
- (a) Every audit report, which shall be completed within three months of the end of the financial year shall contain a statement by the auditors as to whether -
 - (1) in their opinion the balance sheet and profit and loss account drawn by the Bank are full and fair and properly drawn up;
 - (2) whether they exhibit a true and correct statement of affairs of the Bank;
 - (3) the information obtained from the officers or agents of such Bank is satisfactory; and
 - (4) such other relevant matters as may be prescribed by the Central Bank.
 - (b) For Bank, the report of the auditors made in accordance with sub-section (a) shall be read together with the report of the Board of Directors of the Bank at the annual general meeting of their shareholders.
 - (c) Upon its completion, but not later than three months after the end of the financial year, the audit report of the auditors made under sub-section (a), together with the auditors' management letter, shall be transmitted to the Central Bank.
 - (d) Where the Central Bank is of the opinion that the audited financial statements do not exhibit a true and correct statement of affairs of the Bank or that the auditors' report

- or management letter are otherwise unsatisfactory, it may order the Bank to require the auditor or newly appointed external auditor to submit a fresh report at the expense of the Bank.
- (e) If an auditor, in the course of the performance of his duties as an auditor of a Bank, found out the following matters, shall inform to the Central Bank immediately:
- (1) there has been a breach or non-observance of the provisions of this Law or fraud or dishonesty has been committed;
 - (2) losses have been incurred which reduce the capital funds of the bank licensed institution by fifty percent;
 - (3) serious irregularities have occurred, including irregularities that jeopardize the security of the creditors; or
 - (4) being unable to confirm that the claims of creditors are still covered by the assets.
90. (a) The external auditor shall submit the audit report to both the concerned Bank and the Central Bank.
- (b) While submitting the audit report to the Central Bank under sub-Section (a), the external auditor shall attach thereto the other reports connected with the audit of the concerned Bank, as well as the documents prescribed by the Central Bank.

Chapter 12

Inspection and Supervision

On-Site Inspection of a Bank

91. (a) The Central Bank shall cause an on-site examination to be made of each bank at intervals at least once in every two years.
- (b) The Central Bank may –
- (1) conduct any on-site examination of a Bank under examination jointly with other persons.
 - (2) select, appoint and authorize any chartered accountant or firm of chartered accountants to be an examiner.
- (c) An examiner can legally conduct the following -
- (1) to require any director, officer, other employee or auditor of a Bank under examination to furnish all such information relating to the affairs of the Bank, as such examiner may consider necessary;
 - (2) to require any director, officer, other employee or auditor of a Bank under examination to produce for inspection any documents and cash, securities and other assets, of the Bank, in his possession or custody;
 - (3) in any case where there is evidence of mismanagement by a Bank under examination, to require-
 - (aa) to submit the accounts of the Bank for audit by an auditor authorized by the Central Bank;
 - (bb) require the Bank under examination to furnish to the auditor such information; and
 - (cc) to produce for inspection by the auditor any documents and cash, securities and other assets, of the Bank, or in its possession or custody.
- (d) It shall be the duty of every director, officer, employee and auditor of a Bank under examination to comply with the requirements imposed under section 91 and to provide requirement.
- (e) Where the Central Bank considers it necessary to determine whether a Bank is carrying on business in a manner detrimental to its present or future depositors, it may by notice in writing, require any person whom it considers to have information relating to the Bank, to furnish such information to the Central Bank.

- (f) A person required to furnish information to the Central Bank under subsection (e) shall do so, unless such person is prevented by a court order to furnish such information to the Central Bank.
- (g) For the purpose of ascertaining the true condition of the affairs of a licensed institution under examination, the Central Bank may for the purpose of an examination under this section also examine the business of any company, which is or has at any relevant time been -
 - (1) a holding company or subsidiary company of the Bank under examination;
 - (2) a subsidiary company of a holding company of the Bank under examination;
 - (3) an associate company of the bank licensed institution under examination,
- (h) Any person shall comply with any requirement of section 91, or imposed on him by the Central Bank under this section without default.

Inspection made by Foreign Banks

- 92. (a) A foreign bank may inspect its branch and bank representative office established in the State after securing the approval of the Central Bank and subject to the conditions prescribed by the Central Bank.
- (b) The concerned foreign bank must submit to the Central Bank a copy of the inspection report prepared by it after conducting inspection under Sub-section (a).

Chapter 13 Corrective Action and Bank Resolution Measures

Responsibility of Central Bank concerning compliance by Bank

- 93. It shall be the responsibility and duty of the Central Bank to systematically monitor the performance of all Banks so as to ensure their compliance with all applicable criteria, standards, rules, regulations and provisions of this Law.

Corrective actions for the Banks

- 94. (a) The Central Bank may set up corrective action plans to carry out the followings where-
 - (1) a Bank informs to the Central Bank that it is insolvent or that it is likely to become unable to meet all or any of its obligations to a material extent or that it is about to suspend payment to any extent;
 - (2) whether after an inspection under section 91, or otherwise, the Central Bank is observed that the followings matters are being occurred in the Bank -
 - (aa) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or the public generally;
 - (bb) is not paying its financial obligations as they fall due;
 - (cc) has become or is likely to become unable to meet all or any of its obligations to a material extent, or is about to suspend payment to any extent;
 - (dd) has contravened any provision of this Law or any condition of its license, or any provision of any law, regardless that there has been no prosecution in respect thereof;
 - (ee) has obtained its license on the ground of false or fraudulent statements made by it in connection with the license application;
 - (ff) any director, chief executive or officers of a Bank is or is likely to be detrimental to the interests of the Bank;
 - (gg) the Central Bank is being hindered in supervising the Bank because all or a significant part of the administration, operation and books or

- records of the Bank have been moved outside of State without the prior consent of the Central Bank;
- (hh) has failed to carry out any direction given to it by the Central Bank;
 - (ii) has failed to meet the Central Bank standards relating to asset quality, management, earning, liquidity or sensitivity to market risk;
 - (jj) has failed to meet or is in danger of failing to meet any capital requirements in this Law or any regulation of the Central Bank;
 - (kk) engaging in practices, operations or activities that could pose risks to the depositors of the banking system in whole or in part;
 - (ll) is insolvent and the value of total assets is less than the value of total liabilities;
 - (mm) is facing legal action for relief by a custodian, receiver or liquidator under any bankruptcy law or any law that provides for relief of debtors;
 - (nn) has engaged in or been used for criminal activities and the bank licensed institution has not taken measures adequate to prevent it;
 - (oo) consist of one or more foreign bank which have gone into voluntary liquidation, or whose license to carry on banking business in the country of its principal place of business has been cancelled;
 - (pp) is otherwise in a situation which the Central Bank considers may materially impair the ability of the Bank to meet its obligations or otherwise continue its operations;
 - (qq) the Bank caused losses consecutively for three financial years.
- (b) Notwithstanding anything contained in sub-section (a), where the Central Bank determines that the giving of a warning notice under section 95 would more jeopardize the interest of depositors or creditors, the Central Bank may proceed to take any of the corrective actions under section 96 without giving a warning notice.

Warning notice issued by Central Bank

95. (a) Where the Central Bank has made a determination that any of the circumstances described in section 94 exists in respect of a Bank, the Central Bank shall issue a warning notice to Bank.
- (b) Upon being served a notice under sub-section (a), the Bank shall, within two weeks of being served the notice, submit to the Central Bank in writing its plan of action and commitment to address the weaknesses or lapses.
- (c) A plan of action referred to in sub-section (b) shall-
- (1) give details of remedial measures to address the underlying weaknesses or lapses in the Bank;
 - (2) be approved by the Board of Directors of the Bank concerned;
 - (3) specify the timeframe within which the weaknesses or lapses would be satisfactorily addressed; and
 - (4) explain the monitoring mechanisms for the implementation of the remedial measures.
- (d) A Bank which has submitted a plan of action to the Central Bank shall submit such updates or other reports as may be required.
- (e) If a Bank fails to submit a plan of action within the specified time or if the Central Bank determines that the plan of action submitted by the Bank is inadequate, or if the Bank fails to implement the plan submitted, the Central Bank may take any such corrective actions specified in section 96.

Power of Central Bank to ensure corrective actions taken by banks.

96. (a) The Central Bank may take one or more of the following actions against a Bank to which a notice has been issued under Section 95(a) or a Bank falling within any one or more of the circumstances mentioned in section 94-
- (1) caution or prohibit the Bank against entering into any particular transaction or class of transactions;
 - (2) direct the Bank to cease and desist from any unsafe or unsound practice or contravention;
 - (3) require the Bank to take appropriate action as may be directed by the Central Bank;
 - (4) during the course, or after the completion, of any inspection of a Bank under section 91,
 - (aa) require the Bank to call a meeting of its directors for the purpose of considering any matter relating to the affairs of the Bank;
 - (bb) require an officer of the Bank to discuss any such matter with the Central Bank;
 - (cc) require the Board of Directors of the Bank or any committee to give in writing to any officer specified by the Central Bank all notices of, and other communications relating to, any meeting of the Board and the committee;
 - (dd) appoint one or more of the officers of the Central Bank to observe the manner in which the affairs of the Bank or of its officers or branches are being conducted and make a report thereof; or
 - (ee) require the Bank to make, within such time as may be specified by the Central Bank, such changes in the management as the Central Bank may consider necessary based on the state of affairs disclosed during or by the inspection;
 - (5) require the Bank to increase its paid up capital either through the issue of new shares or a call on the unpaid portion of the issued capital;
 - (6) require the bank licensed institution to maintain higher capital adequacy or liquidity ratios or place other restrictions or conditions on the business conducted by the bank licensed institution;
 - (7) suspend in whole or part of the business of the Bank;
 - (8) suspend in whole or part of the shareholders' rights, including voting rights, in the Bank and/ or prohibit the distribution of profits or other withdrawals by shareholders of the Bank;
 - (9) suspend or permanently bar from office of the bank licensed institution, any director, chief executive, or officer;
 - (10) restrict the powers of any director, chief executive, officer and employee of the Bank;
 - (11) limit the compensation, including management fees and bonuses paid to directors and senior officers of the Bank;
 - (12) prohibit or impose limitations the acceptance of deposits and the granting of loans or advances or the making of investments by the Bank
 - (13) require the Bank to enhance its governance, internal controls and risk management systems;
 - (14) require the downsizing of operations, restrict the expansion of banks in domestic and abroad, branches or offices or the closing of branches or offices, of the Bank;
 - (15) enhance forecast of for unqualified assets. (16) prohibit principal or interest payments on subordinated debt provided by the shareholders of the Bank;
 - (17) by order in writing made by the Central Bank, remove from office, any director, chief executive or officer of the Bank, except from the State Owned Banks, if State Owned Banks, inform to take necessary action;

- (18) by order in writing made by the Central Bank, suspend the Board of Directors and take control of the Bank and operate its business through the appointment of administrator, selected by the Central Bank as being appropriate to manage the Bank;
- (19) by order in writing made by the Central Bank, require the Bank to apply for de-listing from any stock exchange on which it is listed.
- (b) In the case of an order under paragraphs (9) and (17) of sub-section (a), the director, chief executive or officer to be removed from office, have been given a reasonable opportunity to make representations to the Central Bank in respect of the proposed order. Provided that if in the opinion of the Central Bank, in the case of an order to be made by the Central Bank under paragraphs (9), (17) and (18) of sub-section (a), any delay would be detrimental to the interests of the Bank, or its depositors, creditors or the public generally, the order may be made immediately and the opportunity to make representations be given as soon as possible after the order has been made.
- (c) The order may, in consequence of such representations be confirmed, modified, amended, replaced or revoked subject to such conditions, as the Central Bank may specify.
- (d) An order made under paragraph (18) of sub-section (a), shall be valid for a period not exceeding two years unless extended by subsequent order issued by the Central Bank.
- (e) The Central Bank shall provide an initial report to the Government as soon as practicable after the control of a Bank has been taken over by an Administrator appointed under paragraph (18) of sub-section (a) and a yearly report thereafter.
- (f) An order of the Central Bank made under paragraph (18) of sub-section (a) may at any time be revoked by an order and such order may contain directions or provisions of an incidental, ancillary, or consequential nature, as deemed necessary or expedient by the Central Bank.
- (g) Any director, chief executive or officer removed from office in a bank licensed institution under paragraph (17) of sub-section (a) shall cease to hold the office with effect from the date set out in the order and shall not thereafter hold any other office in that Bank or, in any manner, whether directly or indirectly, engage in, any affairs or business of that Bank.
- (h) The removal of any director, chief executive or officer under paragraph (17) of sub-section (a) shall be lawful and valid notwithstanding anything contained in any contract of service or agreement or contract, and whether or not made or provided for under any law any person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.
- (i) The provisions of this Section shall apply to the foreign bank branch.
- (j) All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any of its bank branch office shall be attributed to that single entity in applying the provisions of this Chapter.
- (k) For the purposes of this Chapter, the capital and value of assets of a Bank shall be determined in accordance with standards and procedures specified in the regulations made by the Central Bank.

Chapter 14 Administratorship

Appointment of an Administrator

- 97. (a) Administrators shall be appointed by an order of the Central Bank under of section 96(a) (18).
- (b) For the purposes of subsection (a), only fit and proper persons are eligible to serve as Administrator for a Bank.
- (c) If at any time an Administrator becomes ineligible to serve, the Administrator shall be replaced by the Central Bank.

- (d) An Administrator shall be appointed for a term not exceeding twenty four months as specified in the appointment, which may be extended once for another period not exceeding twenty four months.
- (e) The Administrator shall be employed by the Central Bank and receive remuneration from the Central Bank.
- (f) All costs incurred by the Central Bank on account of the administratorship, including the remuneration of the Administrator, shall be borne by and charged to the Bank for which the Administrator is appointed.
- (g) The decision by the Central Bank appointing an Administrator or extending the term of appointment of an Administrator shall be in writing, specifying the grounds for its decision.

Review of appointment

- 98.
- (a) Within five business days from the date of service of the decision appointing the Administrator for a Bank, the board of directors of the Bank may make written representations on behalf of the Bank to the Central Bank challenging the appointment of the Administrator.
 - (b) In the event that no such challenge is made within the five business days, the Bank shall be deemed to have consented to the appointment of the Administrator.
 - (c) Upon the timely receipt of such a challenge, the Central Bank shall review the appointment of the Administrator decide either to affirm the appointment or to terminate the appointment, giving the grounds for its decision in writing.
 - (d) The decision made under paragraph (c) shall be final and served promptly on the chairman of the board of directors of the Bank.
 - (e) If the appointment of the Administrator is terminated, the Administrator shall immediately return control of the Bank and its assets, books and records to the authorized manager of the Bank.

Effect of taking control

- 99.
- (a) Upon the appointment of an Administrator the Bank and its directors, executive officer and officers shall submit the property, business and affairs of the Bank to the control of the Administrator, and shall provide the Administrator with all such facilities as may be required to carry on the business and affairs of the Bank.
 - (b) The Administrator shall assume control of the property, business and affairs of the Bank concerned, and carry on the business and affairs of that Bank in the name and on behalf of that Bank, for such time as may be specified in the order or until such time when the order is revoked.
 - (c) Throughout the period the order is in force, all the powers of the Bank, and of its directors and shareholders, under the constituent documents or memorandum or articles of the Bank, or exercisable by the Bank or its directors under any written law, or otherwise, there shall be vested in the Administrator.
 - (d) While the order is in force, no director, executive officer or officer of a Bank shall, either directly or indirectly, engage in any activity in relation to the Bank, except as may be required or authorized by the Administrator.
 - (e) No remuneration of whatever nature shall accrue or be payable to any director, executive officer or officer of the Bank, except that which is approved in writing by the Administrator.

Remedial actions that can be taken by the Administrator

100. An Administrator may with the approval of the Central Bank, and notwithstanding any provisions of the Myanmar Companies Act, Special Company Act or any other prevailing

law, take any one or more of the following measures for the purpose of carrying out the rehabilitation of the Bank -

- (a) suspend, terminate and wind up, any part of the Bank's activities in or outside of the State ;
- (b) sell the assets of the Bank to any other Bank or legally incorporated entity on such terms and conditions as may be approved by the Central Bank;
- (c) terminate the employment of any officers or employee, or replace any officers and employee, of the Bank;
- (d) if such person under sub-section (a) is from the State Owned Bank, inform to the respective department and entity to take necessary action;
- (e) make such arrangements as the Administrator considers necessary for the merger of the Bank with another Bank;
- (f) re-organize the Bank by increasing its capital and selling shares to new shareholders and reconstituting the board of directors of the Bank;
- (g) re-construct the Bank in any such manner as the Administrator considers to be in the interest of depositors, including the closing down of unviable business or the Bank or re-organizing its management; or
- (h) take any such other measures as may be approved by the Central Bank to rehabilitate the Bank.

Report of the Administrator

- 101. (a) The Administrator shall prepare and present to the Central Bank a report on the financial condition and future prospects of the Bank for which the Administrator has been appointed within the time specified by the Central Bank.
- (b) The Administrator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the Bank.
- (c) The report shall be accompanied by a proposed action plan, where relevant, that shall discuss the relative costs and benefits associated with-
 - (1) returning the Bank to compliance by carrying out an action plan;
 - (2) rehabilitation of the Bank under the procedure set forth in Chapter 15;
 - (3) a voluntary liquidation under Chapter 17;
 - (4) revocation of the license and liquidation of the Bank; and
 - (5) commencement of insolvency proceedings against the Bank.

Termination of Administrator

- 102. (a) The appointment of an Administrator shall terminate upon the earlier of-
 - (1) the completion day of the term specified in appointment of the Administrator and extension thereof; or
 - (2) the day a termination decision made by the Central Bank; or
 - (3) the day a decision of a court is passed to that effect;
 - (b) Within twenty business days of the termination of the appointment, the Administrator shall prepare and submit to the Central Bank a final report of the Administratorship.
103. The Central Bank may, on such terms and conditions as determined, grant financial assistance to the respective Financial Institution to meet the temporary liquidity requirement by providing loan during the period of administration of the Administrator.

Chapter 15 Rehabilitation of Bank

Action available of the Central Bank

104. (a) The Central Bank shall, within one year of placing a Bank under the control of an Administrator audit or cause to audit the accounts of the Bank concerned.
- (b) Based on the report of the Administrator and audit, the Central Bank may take any one or more of the following actions:
- (1) release the suspension of the Board of Directors of the Bank made under section 96(a), sub-section (18) and order the same Board of Directors to operate the business of the Bank;
 - (2) dismiss the Board of Directors of the Bank and direct the convening of a general meeting of the Bank to elect a new Board of Directors;
 - (3) carry out a capital reduction exercise and cancel any portion of the shares of the Bank which is lost or unrepresented by available assets;
 - (4) dilute the participation of the existing shareholders by issuing shares to such persons and at such consideration as may be determined by the Central Bank;
 - or
 - (5) file an application in the concerned Region or State High Court for the liquidation of the Bank.
- (c) Without prejudice to the powers conferred under section 96, or sub-section (b) , and in addition to the powers conferred under the Central Bank of Myanmar Law -
- (1) the Central Bank may publish the following for public information
 - (aa) direct any shareholder of the Bank to divest or transfer the shares owned by him to a fit and proper person approved by the Central Bank on payment by such person of such payment as may be determined by the Central Bank;
 - (bb) transfer any assets or liabilities, in whole or part, from the Bank to another Bank or financial institution, on such terms and conditions as may be determined by the Central Bank; or
 - (cc) subject to section 107, vest all or part of the assets and liabilities of the Bank in another Bank or financial institution, as may be considered appropriate by the Central Bank; and
 - (2) the Central Bank may after obtaining the consent of the Pyidaungsu Hllutaw through the Cabinet of the Union carry out the following matters -
 - (aa) purchase any shares of the Bank by the Union budget for the purpose of controlling the business of that Bank;
 - (bb) provide soft loans to the Bank, financed by the Union budget for the purpose of ensuring stability of the Bank and the financial system as a whole.
 - (cc) establish a new Bank to be capitalized by the Union budget to acquire the assets and liabilities of the Bank.
- (d) In deciding on the appropriate action to be taken under subsection (b) or sub-section (c), the Central Bank shall have due consideration to the latest audit report of the Bank and any report prepared by the Administrator.
- (e) No action under sub-section (b), or sub-section (c), shall be taken unless the Bank in respect of which the action is to be taken has been given a reasonable opportunity to make representations to the Central Bank in respect of the proposed order:
Provided that if in the opinion of the Central Bank any delay would be detrimental to the interests of the Bank, or its depositors, creditors or the public generally, the action may be taken immediately and the opportunity to make representations shall, be given as soon as possible after the action has been taken.

- (f) As a consequence of such representations, the action of the Central Bank shall be confirmed, modified, amended, altered, varied, replaced or revoked subject to such conditions, as the Central Bank may specify.
- (g) The Central Bank may for the purposes of this section, disclose information relating to the Bank to any potential acquirer and the recipient shall hold such information in confidence and use it solely for purpose of making a decision on the acquisition.

Shareholder's Rights

- 105.
- (a) For the purposes of this Chapter, only the owners' representative of a Bank may make representations to the Central Bank against any action taken by the Central Bank.
 - (b) Any following person may perform as owners' representative:
 - (1) the person appointed by the owners of the Bank to be the representative;
 - (2) the person holding for the time being the office of Chairman of the Board of Directors of the Bank or his duly authorized representative.
 - (c) Within fourteen days from the date of service of an order made by the Central Bank under section 104 (b) and (c), the owners of the Bank may make objections in writing to the Central Bank against the decision.
 - (d) The owners shall be deemed to have consented to the decision taken if the Central Bank does not receive the objection on time.
 - (e) The Central Bank shall within fourteen days of the receipt of timely objections, review the objections and either confirm or modify or terminate the order of the Bank as it considers appropriate giving the grounds for the decision.
 - (f) The decision of the Central Bank shall be served promptly on the owners' representative of the Bank.
 - (g) All action taken by the Central Bank shall remain in full force and effect during such period unless or until otherwise terminated by the Central Bank.
 - (h) The order confirmed, modified or terminated decision issued by the Central Bank shall be final and conclusive.

Capital reduction and cancellation of shares

- 106.
- (a) Where the paid-up capital of such Bank has been lost or is un-represented by available assets, on notice being published for public information, through an application to the concerned Region or State High Court, reduce the share capital of the Bank by canceling such portion of its paid-up capital that has been lost or un-represented by available assets.
 - (b) Where the assets or liabilities of the Bank have been transferred to another person under paragraph section 104 (c)(1)(bb) and (cc) , the Central Bank may on notice being published for public information, through an application to the concerned Region or State High Court. The residual share capital of the Bank may be cancelled by the order or decision of the Region or State High Court.
 - (c) Where the Central Bank issues an order under subsection (a) to reduce the share capital of a Bank, if on the expiry of ninety days from the date of any call made by the Bank on its members to pay on their respective shares, payment on any such shares has not been made, the Central Bank may proceed to apply to the concerned Region or State High Court for the cancellation of such shares for which payment has not been made.
 - (d) Where the share capital of a Bank is reduced pursuant to subsection (a), or any of its shares is cancelled pursuant to subsection (b), the Central Bank may require the constituent documents or memorandum of association or articles of association of the Bank to be altered and any company records or registrations amended accordingly to the Companies Registration Office.

Perpetual Vesting of Assets and Liabilities

107. Where all or part of the assets and liabilities of a Bank are to be vested or transferred to another Bank or financial institution under section 104, the Central Bank may by order published for public information. Such order shall be final and conclusive.
108. Any person who has right to obtain perpetual vesting of assets shall be:
- (a) the vesting of assets and liabilities of the Bank to which an order under section 107 applies in the acquiring institution is justified by the interests of the depositors and creditors of the transferee institution or the public interest;
 - (b) the acquiring institution is capable of carrying on in a competent manner the business of the Bank;
 - (c) the acquiring institution agrees in writing to comply with such terms and conditions as may be specified by the Central Bank relating to the manner in which the assets to be vested are to be used and any existing liabilities are to be met.

Effect of Perpetual Vesting Order

109. (a) With effect from the relevant date specified in the vesting order issued under section 107 -
- (1) all rights of the transferee institution to the assets vested and all obligations under the liabilities vested shall be deemed to have been transferred to and acquired by the acquiring institution even the acquiring of vested liabilities has not been perfected;
 - (2) all entries in all the Official Registers recording assets or liabilities so vested shall be changed by replacing the name of the transferee institution with the name of the acquiring institution, provided however, that no failure to make such change shall affect any right or obligation transferred and acquired by the acquiring institution under the vesting order;
 - (3) the acquiring institution shall comply with the terms and conditions of the vesting that the acquiring institution has consented to in writing and with any such other directions as the Central Bank may issue under this law or the Myanmar Companies Act and Special Company Act;
 - (4) the license issued to the transferee institution shall be modified to the extent necessary to accommodate the effects of the vesting order on the business of such transferee institution ; and
 - (5) if all assets and liabilities of the transferee institution are vested in the acquiring institution, the license to the transferee institution shall be cancelled by the Central Bank.
- (b) Unless otherwise specified by the Central Bank and as may be set out in the vesting order issued under section 107, with effect from the relevant date—
- (1) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature pertaining or relating to the vested assets or liabilities of the transferee institution shall be deemed with effect from the date granted by the acquiring institution; and
 - (2) all actions and proceedings of whatever nature instituted by or against the transferee institution pertaining or relating to the vested assets or liabilities of the transferee institution shall be deemed to be actions and proceedings instituted by or against the acquiring institution.
- (c) For the purposes of this section-
- (1) ‘relevant date’ means the date that vesting order is published for public information;
 - (2) “Official Registries” means a registry established under the law of State that records the creation of interests, ownership, transfers and dealings in

properties whether movable or immovable of individuals and entity legally incorporated in State.

Taxes and fees

110. Taxes, fees or charges which shall be due and owing on any transfer of an asset or liability, may be applied to the Ministry under this Chapter, for exemption.

Moratorium

111. (a) In addition to the powers in this Chapter, the Central Bank may, if it considers it to be in the interest of the Bank, or if it is necessary to protect the interests of depositors or maintain stability of the financial system, by order published for public information.
- (1) prohibit any Bank from carrying on all its banking business, or such part of it, as may be set out in the order;
 - (2) prohibit the Bank from doing or performing any act or function connected with all its banking business, or such part of it;
 - (3) suspend the license granted to the Bank under this Law to such extent and for such period as may be necessary to give effect to the prohibitions under paragraph (1) or paragraph (2);
 - (4) provide for all such matters of an incidental or consequential nature, in order to give effect to the matters under the foregoing paragraphs, including provisions for the taking into the custody or control of the Central Bank the property, books, documents or effects of the Bank.
- (b) An order under subsection (a) may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (a).
- (c) An order made under subsection (a), and a further order under subsection (b) may be revoked by the Central Bank at any time and any such order may contain all such incidental and consequential orders and directions deemed necessary by the Central Bank.

Chapter 16

Rehabilitation of Non Bank Financial Institutions and Scheduled Institutions

112. Non Bank Financial Institutions and scheduled institutions may be rehabilitated in accordance with the procedures.

Chapter 17

Liquidation of Banks, Voluntary termination of operations by a Bank and Prior Approval for Liquidation

Liquidated or

113. (a) No person shall file petition to the Region or State High Court for a bank to be winding-up or voluntary ceasing operations or voluntary liquidating of a Bank, without the written approval of the Central Bank.
- (b) An approval under subsection (a) shall not be granted unless the Central Bank is satisfied on the following facts –
- (1) that the incumbent Bank is solvent and has the ability to repay its depositors and other creditors without delay; and
 - (2) that the winding –up, liquidation of the incumbent Bank has been approved at a meeting of the shareholders of the banking by an affirmative vote representing not less than three fourths of the outstanding shares entitled to vote:

- (c) Winding-up or liquidation of a domestic Bank being a State owned corporation without the prior written approval by the Government, or for the liquidation of a branch in State of a foreign financial institution without the written request by the management of the foreign financial institution to which the branch belongs.

Conditions for Voluntary Winding up or Liquidation

- 114. (a) Before the Central Bank grants an approval under section 113(b) and (c), it shall ensure that the incumbent Bank seeking voluntary liquidation has -
 - (1) repaid its depositors which deposited at the Bank; and
 - (2) paid all financial liability or obligations incurred under this Law and return all funds and other property held by it in a fiduciary capacity.
- (b) In addition to the requirement in subsection (a), an incumbent Bank has
 - (1) wound- up all operations undertaken; and
 - (2) immediately cease to carry on the business to be liquidated, exercising only such powers as are necessary to effect an orderly liquidation.
- (c) The Central Bank may request for reports, documents and such other information concerning the person seeking the approval and the incumbent Bank , including its winding-up and liquidation plan.
- (d) The Central Bank may issue such direction as it deems fit to any person seeking the approval of the Central Bank and the incumbent Bank to ensure that the requirements in subsection (a) are met.
- (e) If an incumbent Bank is unable to meet the requirements of section 113 and this section, the Central Bank shall appoint an Administrator under section 97 of this Law.

Notice of Voluntary Liquidation

- 115. (a) The incumbent Bank shall cause a notice of the winding-up or voluntary liquidation –
 - (1) to be sent to the Registrar of Companies within fourteen days of the receipt of the approval under section 113, from the Central Bank;
 - (2) to be sent to all depositors and other creditors, and persons otherwise entitled to the funds or property held by such Bank as a fiduciary, lessor of a safe deposit box or bailee;
 - (3) to be sent to the debtors to repay the loan to the Bank immediately;
 - (4) to be published once in newspaper in State for public information; and
 - (5) to be displayed in a conspicuous place at its principal place of banking business and each of its other offices;
- (b) The Central Bank shall specify the information to be included in the notice referred to in sub section (a).
- (c) The Central Bank may exempt an incumbent Bank from sending a notice under subsection(a) (2) to any person where the Central Bank is satisfied that-
 - (1) it is impracticable to do so; and
 - (2) the person has otherwise had adequate notice of the winding up and liquidation.

Rights of Creditors

- 116. (a) The approval to go into winding-up or voluntary liquidation shall not prejudice the rights of a depositor or other creditor of an incumbent Bank to payment in full of any claim, or the rights of an owner of funds or other property held by the Bank.
- (b) All lawful claims shall be paid promptly and all funds and other property held by the incumbent Bank shall be returned to their rightful owners within such maximum period as the Central Bank may determine.

Cancellation of License and Distribution of Assets

117. (a) Upon completion of the winding up and liquidation, the incumbent Bank shall prepare and submit to the Central Bank an audited statement of accounts and a report of liquidation certified by an opinion of an external auditor acceptable to the Bank.
- (b) The opinion of the auditor submitted under sub-section (a), shall state-
- (1) whether in the statement of accounts are full and fair and have been properly drawn up;
 - (2) whether the report of winding up or liquidation exhibits a true and correct statement of the liquidation of the incumbent Bank;
 - (3) where the auditor has called for any explanation or information from the incumbent Bank, whether the explanation or information received by the auditor is satisfactory; and
 - (4) whether the voluntary winding up and liquidation was carried out in compliance with the directions given by the Central Bank.
- (c) Where the Central Bank is of the opinion, based on the documents submitted under sub-section (a) that the incumbent Bank has discharged all its obligations as referred to in section 114:
- (1) the Central Bank shall cancel the license of the incumbent Bank and notify the cancellation in accordance with the provisions of section 115 of this Law; and
 - (2) the Bank shall distribute its remaining assets among its rightful owners in proportion to their respective rights.
- (d) No distribution under sub-section (c)(2) shall be made before the incumbent Bank has-
- (1) transmitted to the Central Bank funds sufficient to meet any disputed claim to payment or return of funds or property that may be determined by the court;
 - (2) transmitted to the Central Bank funds payable to all depositors, other creditors or persons entitled thereto who have not claimed such funds; and
 - (3) complied with section 152 with regards to other funds and property held by the Bank which cannot be distributed to the persons under sub-section (c)(2).
- (e) All costs, charges and expenses properly incurred in the liquidation are payable out in priority of the assets of the Bank in voluntary liquidation;
- (f) On receipt from the Bank of a notice of approval of the audited statement of accounts and the report of liquidation submitted under sub-section (a), the incumbent Bank shall cause the notice to be published for public information.
- (g) Upon the publication of such notice of approval under sub-section (g), the Registrar of Companies, to strike-off the name of the company from the Register of Companies.
- (h) From the date of the notice in sub-section (g), the Bank shall stand dissolved.
- (i) The dissolution of a Bank under sub-section (g) shall not affect the liability under this Law or any law of any owner, director, chief executive officer or other officer of the Bank and that liability shall continue and may be enforced as if the Bank had not been dissolved.

Compulsory liquidation

118. (a) A Bank may be compulsorily wound up or liquidated by the Central Bank, if one or more of the following grounds are present:
- (a) the Bank is not paying its financial obligations as they fall due; or
 - (b) the Central Bank determines that the capital of the banking is less than one-half of the minimum capital to be maintained by the Bank under this Law; or
 - (c) the Central Bank determines that the value of the assets of the Bank is less than the value of the debts or is insolvent; or
 - (d) The Administrator appointed under section 97 recommends that the bank

licensed institution be liquidated.

Representative of Owners in Liquidation Proceedings

119. The following person may discharge as the owners' representative of the Bank in liquidation proceeding:
- (a) for a domestic Bank not being a State Owned Bank, the person holding for the time being the office of Chairman of the Board of Directors of the Bank or his duly authorized representative, unless another person is appointed as owners' representative by the owners of the Bank;
 - (b) for a State Owned Bank, Cabinet or his duly authorized representative; and
 - (c) for a branch or a subsidiary of a Foreign Bank, the Chief Executive or his deputy of the Foreign Bank.

Petition for commencing liquidation proceedings

120. The Central Bank may petition the concerned Region or State High Court to commence liquidation proceedings against a bank licensed institution.

Rejection of Petition

121. A petition for commencing liquidation proceedings against a Bank shall be rejected by the respective Region or State High Court if -
- (a) none of the grounds of section 118(a) applies; or
 - (b) the petition is not accompanied by the documents;
 - (c) any document or other evidence submitted to the respective Region or State High Court in support of the petition is manifestly false or inaccurate and without such document the petition does not meet the requirements of the law; or
 - (d) the owners' representative for the Bank shows, with the concurrence of the Central Bank, that sufficient capital funds have been made to the Bank immediately; or
 - (e) the petition concerns a State Owned domestic bank, provides a written guarantee for the due payment of all liabilities of the Bank; or
 - (f) the petition does not meet any other requirement of the law.

Appointment of Liquidator

122. By its decision to commence liquidation proceedings against a Bank, concerned Region or State High Court shall appoint the Central Bank or a person or persons nominated by the Central Bank to act as the liquidator.

Negotiated Settlement

123. (a) The liquidator for a Bank in liquidation may enter into and carry out negotiated settlements of claims with any creditor and debtor of the Bank, with the prior approval of the Central Bank.
- (b) No such settlement shall be subject to opposition, review or appeal.

Priority of Payment

124. The assets of a Bank shall be distributed among its creditors in the following order of priority-
- (a) secured debt;
 - (b) all costs and expenses on account of the administration of the insolvency;
 - (c) claims with regard to deposits that are not in the form of debt securities;
 - (d) liabilities of the Bank on account of Administration, rehabilitation and any liabilities

- (e) due and owing to the Central Bank;
- (e) national and local taxes due over a period of not more than one year preceding the date of the liquidation decision;
- (f) salary payments to employees of the Bank ,excluding any remuneration of members of the Board of Directors, as accrued to the date of the decision to open liquidation proceedings;
- (g) claims of unsecured creditors; and
- (h) any other claims not paid under paragraphs (a) to (f).

Cross Border Insolvency

125. (a) In order to promote equal access of resident and non-resident creditors to a universal pool of assets of a Bank in liquidation that engaged in cross border activities-
- (1) if a Bank in liquidation has branch in a foreign country, shall cooperate with the authorities of that country;
 - (2) if a creditor of a Bank in liquidation has received partial payment on his claims in a foreign country, the balance of his claims may be presented for payment together with costs incurred in the liquidation proceedings before the concerned Region and State High Court;
 - (3) the Concerned Region and State High Court may decide to what extent foreign financial insolvency resolution measures against Foreign bank branch should be recognized in liquidation proceedings commenced by the concerned Region or State High Court concerning their foreign bank branch in Myanmar; and
 - (4) if a Foreign bank branch is in liquidation in the country where its principal place of business is located, the concerned Region or State High Court may at the request of the Foreign bank branch, authorize the transfer to the liquidator in that country such assets of the foreign bank branch in Myanmar, as the foreign bank branch shall deem advisable and in the interest of the depositors and creditors of that foreign bank branch in Myanmar.
- (b) Claims of non-resident creditors of a foreign bank branch shall not be recognized for the purpose of the set -off or netting of obligations and shall not otherwise be admitted in liquidation proceedings commenced against a foreign bank branch.
- (c) Liquidation proceedings in Myanmar commenced against a foreign bank branch shall not limit the rights of creditors of the foreign bank to which the branch belongs to pursue action of their claims against foreign assets held by the foreign bank outside Myanmar.
126. The Central Bank may stipulate the following measures:
- (a) Liquidation process and regulations;
 - (b) Duties, terms and conditions of Liquidator;
 - (c) Finality in payment, clearing and settlement systems;
 - (d) Set Off and netting process;
 - (e) Process for distribution;
 - (f) Liquidation proceedings concerning foreign bank branch; and
 - (g) Termination of Liquidation Proceedings.
127. (a) The Bank shall not be affected with the provisions of the Myanmar Companies Act, Special Company Act or any other laws relating to insolvent of companies which are not prescribed in this Chapter.
- (b) Any petition relating to the final order or appointment of custodian of a Bank shall be applied to the concerned Region or State High Court only by the Liquidator.

Chapter 18
Electronic Money, Electronic Banking and Mobile Banking

128. Electronic money means monetary value as represented by a claim on the issuer which is -
- (a) stored on an electronic device including a card;
 - (b) issued amount of money not more than monetary value received; and
 - (c) accepted as means of payment by persons including the issuer;

Issue of Electronic Money and Credit token Restricted

129. (a) No person may issue electronic money or credit token, to the public unless such person is –
- (1) a Bank; or
 - (2) a financial institution that has been registered for that purpose by the Central Bank.
- (b) Electronic money and credit token may be issued under a written contract between the issuer and the receiver of electronic money or credit token that clearly states the period of validity of the electronic money or credit token issued under the contract and the conditions for redemption of any electronic money or credit token issued under the contract.

Regulate Electronic Money and Credit token

130. (a) The Central Bank may by regulation-
- (a) specify conditions and requirements for obtaining registration from the Central Bank before a person may issue electronic money or credit token to the public, and the circumstances in which such registration shall or may be revoked by the Central Bank;
 - (b) specify requirement relating monitoring the safety of customers' funds, and accounting and reporting;
 - (c) issue regulations applicable to the contractual conditions, arrangements and payment procedures between the various parties that issue, use in payment and accept electronic money or credit token in payment;
 - (d) specify regulations to facilitate inspection on issuers of electronic money or credit token;
131. Any person who issues electronic money or credit token to the public while he is in violation of a provision of this law or a regulation issued under any such section shall be guilty of an offence under this Act.

Electronic Banking Services

132. (a) The Central Bank may allow to establish the systems and practices for electronic banking service including internet banking services, mobile phone banking and other forms of electronic banking .
- (b) For the purposes of subsection (a), the Central Bank may issue necessary regulations and guidelines-
- (1) to limit systemic and other risks that could threaten the stability of financial markets or undermine confidence in the payment system;
 - (2) to encourage institutions to educate customers about their rights and responsibilities and how to protect their own privacy;
 - (3) to encourage the development of effective, low risk, low cost and convenient payment and financial services to customers and businesses through electronic services;

- (4) the institutions must observe regarding with electronic banking services standard; and
- (5) to specify the conditions and process regarding with the establishing of electronic banking services.

Chapter 19

Oversight of Payment and Settlement System

Payment System Policy

133. (a) The Central Bank shall have the power to formulate, adopt and monitor the implementation of a payment system policy for State.
- (b) In promoting safety and efficiency of the payment system the Central Bank shall cooperate with central banks or equivalent entities and with other relevant domestic or foreign authorities.

Powers of the Central Bank

134. The Central Bank shall have the powers-
- (a) to regulate, supervise and monitor payment, clearing and settlement systems ;
 - (b) to provide for the settlement of securities in securities accounts maintained at the Central Bank;
 - (c) to provide for the regulation, supervision and monitoring of providers of money service and other form of payment instruments to the public ; and
 - (d) to facilitate the electronic presentment of cheques.
135. The Central Bank may establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and supervise -
- (a) any system for the clearing and settlement of payments and other arrangements for the making or exchange of payments in domestic or foreign currencies ;
 - (b) any system for the clearing and settlement of securities and other arrangements for the exchange of securities ; and
 - (c) any system to facilitate the clearing and settlement including other arrangements for the making or exchange of payments or the exchange of securities in any currency against other payments or securities in another currency.
136. (a) In order to facilitate the clearing of cheques and other instruments used as means of payment, the Central Bank may, in cooperation with financial institutions, establish clearing houses in such places as it shall deem necessary.
- (b) The Central Bank shall have the power to do all or any of the following acts, in relation to a clearing and settlement system and its clearing house:
- (1) act as a central counter-party, including in a loss-sharing mechanism;
 - (2) act as a custodian of financial assets, or settlement agent, or both;
 - (3) accept and pay interest on deposits from clearing house, a participant or the central counter-party; and
 - (4) provide intra-day liquidity to the participants.

Validity of Netting Agreements

137. Where a Financial Institution or the Central Bank is a party to a netting agreement, the Financial Institution or the Central Bank shall enforce the agreement.
138. Payment service provider includes money service providers, payment instrument issuers and payment system operators.

Legality of Settlement Rules

139. (a) The participants of the clearing house and the member of the central counter-party shall comply with the settlement system rules.
- (b) The rights and remedies of a participant, a clearing house, a central counter-party or the Central Bank, with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a designated clearing and settlement system, may not be affected by insolvency proceedings and may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

Electronic Presentment of Cheques

140. (a) A cheque by electronic means for payment may present to the Bank on whom it is drawn, by truncated cheque.
- (b) In making the electronic presentment of a cheque under sub-section(a), a Bank may act in whole or in part through a third party service provider, including another Bank or the clearing house, and such service provider is deemed to be an agent of the Bank.
- (c) A cheque image or will be recognized as the equivalent of the paper cheque that it represents in any court.
- (d) Once the transfer of funds takes place on a cheque image, or truncated cheque, the original cheque will no longer be negotiable.
141. The Central Bank may stipulate regarding with the dishonor cheque, retention of cheque image, physical cheque and system on electronic presentment as necessary to implement the provisions of this Chapter.

Chapter 20 Credit Information

Powers of the Central Bank regarding Credit Bureau

142. (a) In addition to section 75 of the Central bank of Myanmar Law, the provisions of this Chapter shall apply to matters relating to credit information.
- (b) The Central Bank may establish or allow to establish a credit bureau designed to collect and provide information on the payment record of the customers of all Banks, Non Banking Financial Institutions and other financial institutions in State.
- (c) The Central Bank may require any credit institution and any other entities engaged in the extension of credit to report any information required by the credit reference system.
- (d) Banks, Non Banking Financial Institutions and other institutions shall ensure the veracity of the credit information submitted to the credit bureau.

Regulation of Private credit bureaus

143. (a) The Central Bank shall have the powers to license and regulate the operations of private credit bureaus that access information from Banks, Non Banking Financial Institutions and Scheduled Institutions.
- (b) No person shall operate a private credit bureau without a valid license issued by the Central Bank.
144. The Central Bank may obtain necessary information from a credit bureau for regulatory purposes.

Chapter 21
Power to Exempt, Recovery of Fees, Bank Holidays and Judicial Review

Recovery of fees, expenses, etc.

145. (a) There shall be recoverable as a debt due to the Central Bank from the Bank concerned-
- (1) the amount of any fees payable under section 14, sub-section (b);
 - (2) any remuneration and expenses payable by the Bank to-
 - (aa) appointed auditor;
 - (bb) an administrator appointed under section 96(a)(18); and
 - (3) any financial penalty payable by the Bank under this Law.
- (b) An action to recover any financial penalty recoverable under this section shall not be exceeded 6 years from the date on which the cause of action accrued.

Declaration of Bank holidays

146. (a) The Central Bank may, at any time by notice to the public, declare any day or days to be a bank holiday or holidays.
- (b) No Bank in State shall do any business without the approval of the Central Bank on any day declared a bank holiday under subsection (a).
147. (a) Any court having to adjudge a case filed in relation to the Central Bank or any action taken by the Central Bank or any person appointed by the Central Bank to act on its behalf, employee, or agent of the Bank, shall be review following:
- (1) whether the Central Bank exceeded its legal authority;
 - (2) whether the procedures followed by the Central Bank in making its decision were materially inconsistent with the procedures prescribed by this Law;
 - (3) whether the notification, or publication of the rules and regulation of the Central Bank fails to meet a material requirement of this Law and
 - (4) whether the decision of the Central Bank is manifestly inconsistent with the provisions of this Law or the Central Bank of Myanmar Law.
- (b) Notwithstanding anything in any other law, any action taken by the Central Bank shall remain in effect without stay or restriction during the period of any legal action by any person or appeal, second appeal and any further appeal or other judicial proceedings related to the appeal.
- (c) Any relief or redress granted by any court against any action taken by the Central Bank shall be confined to compensation in monetary form.
- (d) The competent court to hear any action or suit against the Central Bank or any person indicated in the section (a) shall be the concerned Region and State High Court.

Exemption of certain transactions from stamp duties

148. For the exemption under prevailing stamp act or tax law shall be applied to the Ministry, in respect of the transfer of shares and assets of a Bank or any of its subsidiary companies, sold or disposed by the Bank if such sale or disposal has been approved by the Central Bank under section 107.

Chapter 22
Electronic Evidence

Authentication of electronic documents

149. Notwithstanding anything contained in the provisions of the Evidence Act, any person seeking to admit an electronic document as evidence has the burden of proving its

authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

Methods to present evidence for electronic documents

150. (a) The best evidence rule in respect of an electronic document can be satisfied-
- (1) upon proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or
 - (2) presumed to be of sound evidence.
- (b) Despite subsection (a), in the absence of evidence to the contrary, an electronic document in the form of a printout satisfies the best evidence rule if the printout has been manifestly or consistently acted on, relied upon or used as a record of the information recorded or stored in the printout.

Presumption of integrity of electronic document

151. In the absence of evidence to the contrary, the integrity of an electronic documents system by or in which an electronic document is recorded or stored is proven -
- (a) by evidence capable of supporting a finding that at all material times the computer system or other similar device used by the electronic documents system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic document and there are no other reasonable grounds to doubt the integrity of the electronic documents system;
 - (b) if it is established that the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to introduce it; or
 - (c) if it is established that the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

Standards to be considered

152. (a) For the purpose of determining under any rule of law whether an electronic document is admissible, evidence may be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic documents are to be recorded or stored, having regard to the type of business, enterprise or endeavor that used, recorded or stored the electronic document and the nature and purpose of the electronic document.
- (b) An electronic information document includes data, text, sounds, codes, computer programs, software, or databases.

Chapter 23

Particulars of Unclaimed Moneys or Dormant Accounts

153. (a) Every Bank shall submit to the Central Bank particulars of accounts which have remained dormant for more than 7 years, within the first month of every fiscal year.
- (b) The Central bank may issue guidelines on unclaimed moneys and dormant accounts as it deems necessary.

Chapter 24

Taking Administrative Actions

154. (a) The Central Bank may impose the following administrative penalties on the Financial Institutions, members of the Board of Director, executive officers, shareholders, administrators, managers and employee of the Financial Institution who violate any

of the provision of this Law, regulations, order, directive or procedure issued under this Law:

- (a) giving warning;
 - (b) imposing fine;
 - (c) imposing orders including limit the operation of the Financial Institutions;
 - (d) temporary suspension or termination from discharging duty in the Financial Institution.
155. (a) Any convicted person of the administrative penalty may appeal to the Board of Directors of the Central Bank, within thirty days from the date the penalty is imposed.
- (b) The decision by the Board of Directors of the Central Bank on the appeal under subsection (a) shall be final.
156. The administrative penalties provided in this Law shall not preclude taking criminal action or civil action.
157. Any convicted person under section 154 shall indemnify promptly to the aggrieved Financial Institution or individual for the damages.

Chapter 25 Prohibitions

158. No person shall establish and operate a Bank without license.
159. No person shall establish and operate a Non Banking Financial Institution without registered certificate issued by the Central Bank.
160. No person shall apply with any fraudulent particular when applying licence to the Central Bank.
161. No person shall use the words of Bank, Commercial Bank, Development Bank, Banking business owner or Banking business in its owned business, without licence or written prior approval from the Central Bank except the following institutions:
- (a) any banking institution;
 - (b) institution which is familiar with the such usages under by law or international convention;
 - (c) Representative or office of a Foreign Bank;
 - (d) an institution operating Banking Business on behalf of the Government;
 - (e) a person exempted from the Central Bank by issuing notification to the public.
162. No Foreign Financial Institution shall establish representative office without registration certificate issued by the Central Bank.
163. No person shall carry out the receiving deposits business without license.
164. No person shall use the wording of or any other description seem to have the meaning of finance company, leasing, factoring, credit token, money services, without registration certificate or prior written approval issued by the Central Bank.
165. No Financial Institution or a person shall meet personally, inducing, entering into or offering to enter into any agreement with a view to the acceptance of deposit from any person in domestic or abroad without the prior written approval of the Central Bank.
166. No Financial Institution shall describe false statement of its business and shall make deceptive advertisement.

167. A license holder shall not transfer license and allow to operate to another person.
168. A license holder shall not arrange the following matters without the prior written approval of the Central Bank:
- (a) selling all or a part of his Banking business;
 - (b) buying all or a part of the other Bank's business;
 - (c) merge with the any other Bank;
 - (d) a foreign bank buying all or a part of Banking business in the State;
 - (e) a foreign bank selling all or a part of its own business in the State;
169. Whoever issues the electronic money or credit token shall not violate the provisions of this Law or regulations made under any section of this Law.
170. No private credit bureau shall contravene the money service receiver regulations and fail to supply the accurate credit information under the credit information reporting system.

Chapter 26 **Offence and Punishments**

171. A person who contravenes sections 158,159,160,162,163,167 and 168 shall, upon conviction, be punished with imprisonment for a term which may extend from a minimum of two years to a maximum 5 years and shall be liable to a fine not exceeding than 500 million kyats.
172. A person who contravenes sections 161,164,165,166,169 and 170 shall, upon conviction, be punished with imprisonment for a term which not exceeding than two years and shall be liable for fine not exceeding than 100 million kyats.
173. (a) The Governor may with the consent in writing of the Public Prosecutor, offer to compound any offence under any provision of this Law or under regulations made under this law by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per centum of the amount of the maximum fine, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in the offer.
- (b) An offer under subsection (a) may be made at any time after the offence has been committed and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Governor may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.
- (c) Upon receipt of the amount under subsection (a), no prosecution shall be instituted.
- (d) Nothing in this section shall authorize the compounding of any repeated offence.
- (e) Any fine having to pay to the Central Bank pursuant to the provisions of subsection (a) shall be paid collectively.
174. Whoever abets, attempts, conspires in commission of any offence under this Law shall be liable to punishment provided in this Law for such offence.

Chapter 27 **Miscellaneous**

175. If there is contradiction between any provision of this Law and provisions of Myanmar Companies Act and Special Company Act, the provisions of this Law shall prevail.
176. The Bank which a license is issued under the repealed Law shall surrender its license to the Central Bank within six months from the effective date of this Law. The Central Bank shall

issue new license to the Bank under section 11 of this Law subject to such terms and conditions.

177. Every Bank shall provide the Central Bank with a list of shareholders, and for each owner of a significant ownership, including the ultimate beneficial owner of such significant ownership and such other information on their owners, in particular owners of a significant ownership, as requested by the Central Bank, within one year from the effective date of this Law.
178. Every action of the Central Bank taken under the repealed Law which is not contradicting with this Law, shall continue in full force and effect unless expressly revised or withdrawn by the Central Bank under this Law.
179. All rules, regulations, orders, direction, notifications and procedures issued under the repealed law, may be continued to use unless such provisions are contradicting with this Law.
180. Any application for a license, approval or consent, or for any other purpose whatsoever, or any appeal, made by any person to the Central Bank under the repealed Law and pending immediately before the effective date, shall, if there is a corresponding provision in this Law, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Law, such application or appeal shall lapse on the effective date.
181. All transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with any of the repealed Law by a person who was licensed under the repealed law with any depositor or other customer, creditor, debtor, or other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Law, and, accordingly, any right or liability under such transaction, dealing or business existing, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Law.
182. Offences prosecuted under this Law, shall be prescribed as cognizable offenses.
183.
 - (a) A person who carries out the assigned duties in good faith shall not be taken criminal action or civil action in implementing the provisions of this Law.
 - (b) The Central Bank shall bear the legal costs incurred in defending a proceeding for the person was sued when discharging the duties conferred by the Central Bank.
184. For the purpose of implementing the provisions of this Law, the Central Bank may issue regulations, bye-laws, notifications, orders, directives and procedures as may be necessary.
185. The Financial Institutions of Myanmar Law (The State Law and Order Restoration Council Law No.16/90), is hereby repealed by this Law.

I hereby sign under the Constitution of the Republic of the Union of Myanmar.

Sd/- Thein Sein
President
Republic of the Union of Myanmar